PROPERTY

ITS DUTIES AND RIGHTS


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PROPERTY

ITS DUTIES AND RIGHTS

HISTORICALLY, PHILOSOPHICALLY
AND RELIGIOUSLY REGARDED

ESSAYS BY VARIOUS WRITERS

WITH AN INTRODUCTION

BY

THE BISHOP OF OXFORD

NEW EDITION

WITH AN ADDED ESSAY

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PREFACE TO SECOND EDITION

A NEW edition of this volume of essays offers opportunity for some words of preface, suggested by experience connected with the former one.

Appreciative as was the reception generally accorded to our undertaking, there were certain criticisms of its scope which showed that the idea governing its plan in the writers' minds was not always equally present to those of its readers. Complaint was made that it dealt either with too many aspects of Property or with too few. In particular, separate treatment of the legal and the economic sides of the subject was desired. As regards the legal aspect, its omission was due simply to circumstances; and now what was always part of the scheme is happily supplied in the new essay by Professor W. M. Geldart. This falls naturally into the argument and strengthens the proof of our general thesis, by showing the essentially relative character of the right of property even on its legal side. It has no privilege in our law to protect it against the control of the community, which, acting through the sovereign legislature, has power to re-fashion, to abridge, and to annul. It is not one and immutable, but finds its place in a world of rights, public and private, to each of which varying boundaries are assigned from time to time in accordance with changing views of public policy. Even at any one time it will exist under diverse forms,

designed to further the ends, now of the individual, now of groups which have a narrower or wider social significance. To add such an essay is strictly germane to the whole scope of the volume.

On the other hand, to include a discussion of the application of our root idea to the actual economic situation, with all its complexities and disputable data, is quite another matter. "One thing at a time" is a sound maxim in such a connection. The primary task is to discover the true idea of property by a wide survey of the facts of past experience and theory, in order that it may guide our thinking as a regulative principle, when we come to analyse the existing social and economic order and consider how it may be made more just for all. It makes a vast difference in the long run whether a man has at the back of his mind in all his judgments the principle, "One has a right to do as one likes with one's own," in the crude sense of what is in one's power, and may so remain, without breach of the law of the land; or, on the other hand, the idea of property as a social trust or stewardship. Change of attitude here is the most "practical" thing that can happen to men. It will set each to think out for himself his own obligations under existing conditions; and this effort in turn will create the atmosphere in which public measures of reform can be devised and carried out to the best effect. Accordingly it seemed sound in theory and practice not to include in the present volume an essay, however tentative, containing any particular plan of economic reconstruction.

Since the Essays were written a European War has burst upon us: but it has only enhanced the relevance

and urgency of their main idea. Indeed, it has afforded a most impressive object-lesson of its truth, in that we have seen both public legislation and the spontaneous working of the individual's conscience acting instinctively upon it. Thus in furnishing a reasoned justification of the principle of the relativity of private property to the common weal, this volume can claim attention as a tract for these grave times. In so saying one has not chiefly in mind the demands made upon each by the needs of his fellow-countrymen during the war. Comparatively few, one hopes, will overlook or shirk these, even under the influence of an inadequate theory as to the social nature and obligations of property. One thinks rather of the days yet to come after the war, when the long and more prosaic task of repairing the fabric of society and meeting the awful wastage of resources in material and vital wealth will make yet severer because more sustained demands upon patriotism.

There is around us at this hour a new sense of the normal place of sacrifice in life, and of the enhanced meaning and dignity which it gives to manhood and womanhood, especially when it becomes the pervasive atmosphere of a whole nation's being. The recognition that our daily life is a campaign for a high common cause, with its constant call for loyalty and discipline and self-sacrifice, and its lesson that individual rights in property are all relative to dutiful use in that cause, is being burnt into us by experiences which must leave each and all either more sensitive or more callous to the solidarity of human life in a nation. It is in such a day as this that we reissue the reasoned plea

which these essays in their unity amid diversity virtually constitute, to reconsider the social basis and character of property and its consequent obligations. One immediate and appropriate result of a discerning perusal of this volume should be a fresh readiness in the economically strong to shoulder the burdens of the weak—the phenomenon of the cheerful tax-payer. That would be a good beginning. But many further applications of its principle of social and economic justice will be necessary, if we are to reap to the full the abiding fruits of that new vision of unity and mutual dependence which flashed on us early in August 1914.

J. V. B.

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INTRODUCTION

By the Bishop of Oxford

I think that I shall best justify my appearance as introducing this volume of Essays if I explain the circumstances of their origin. Dr. Bartlet, of Mansfield College, Oxford, had written a letter to the *British Weekly* strongly urging upon Christians the duty of reconsidering their ideas about property in the light of the Bible doctrine of stewardship—the doctrine that God the Creator is the only absolute owner of all things or persons—that "all things come of Him" and are "His own," and that we men hold what we hold as stewards for the purposes of His Kingdom, with only a relative and dependent ownership limited at every point by the purpose for which it was entrusted to us. He was good enough to send me his letter and to suggest that we might combine to issue some literature of a popular kind about the duties and rights of property based on this Biblical doctrine.

Naturally I felt a cordial sympathy with the idea, but I said that before anything of a popular kind was issued, I thought that we needed some more thorough or philosophical treatment of property in idea and history. The Bible doctrine by itself makes an appeal of tremendous force to the individual conscience. But the individual, however deeply stirred in his conscience, however fully convinced that he must not conform himself to the ideas of property which happen to be cur-

rent in society but must assert the Christian principle, finds himself in fact in the bonds of an organized system of property. By himself he can do very little. As a consumer, as a shareholder, as a tradesman, as an owner of land, as a shop assistant, as a clerk, as a workman, he finds himself paralysed by the system of which inevitably he forms a part. The system is not unalterable. It has altered profoundly in more directions than one within recent history, and is altering. But at every stage it holds the individual in its grasp. Not even by "going out of the world," not even were he to do so strange a thing as to become a monk, can he get out of it. The clothes he wears, the food he eats, the railways he travels by, the books he buys, the State he belongs to, hold him in the grip of the system. What he cries out for, when his conscience is awakened, is not merely personal guidance, but also ideas which can be applied to society; not merely again schemes for law-making, but ideas such as must lie behind law-making and without which law-making is in vain. He wants an ideal of property, a principle of property, such as will tend to form a corporate conscience, at first among those who are consciously dissatisfied with things as they are and consciously in want of a theory, and then more widely in society as a whole.

The Lord Chancellor, Lord Haldane, has just[1] been speaking noble and suggestive words to the lawyers of the American Bar Association on the power of a common mind, or common feeling as to what is legitimate and illegitimate, when it has become instinctive and dominant in a society. But this common mind about property is conspicuously lacking amongst us. We are groping in the dark. We are familiar with the traditional cry of "the rights of property," and we are pain-

[1] September 1, 1913.

fully familiar also with the disastrous wrongs which the law and custom of property as it exists among us has inflicted and is inflicting. But we want a theory, a principle to guide us. We cannot act with any power as mere individuals without a corporate mind and conscience on the subject; and we can form no corporate mind and conscience without a clear principle. It was this principle, this philosophy of property, in which, when I listened to Dr. Bartlet's appeal, I felt myself lacking. Without it I cannot play my part effectively as a citizen and still less as a moral teacher. Any moral teaching which is to grip men's minds requires it as a background. Therefore, before engaging in a popular propaganda, I needed to clear up the principle of property.

So I felt: so I knew others were feeling. And, Dr. Bartlet agreeing, we set to work to get written a volume of essays on property in which the subject should be treated both from the standpoint of philosophy and of religion. Divisions of the subjects were easily suggested, and names of willing writers were finally forthcoming; and the present volume is the result of our efforts. Mr. Leonard Hobhouse begins with a statement of the early history of property and its later developments. Dr. Rashdall and Mr. Lindsay deal with the principle of property from the side of philosophy, historically and critically. Dr. Bartlet, Dr. Carlyle, and Mr. Wood give us the history of the treatment of property in Christendom from the side of religion. Dr. Holland concludes with an essay on the aspect of the matter which the previous essays have shown to be of the first importance—the relation of property to personality. Some differences, of emphasis at least, will be felt between different writers, but not such as to interfere with a marked unity of tendency and result.

After reading these essays, I ask myself, How far have I and those who share my need for guidance towards a working principle of property got what we sought? I answer the question for myself by saying that the writers give me the impression of having got to the root of the matter; they write with thorough and adequate knowledge and genuine impartiality; and as a result they help me most effectively to a standing-ground on certain dominant ideas or constructive principles by which I can guide myself and feel assurance in seeking to guide others, ideas and principles such as ought to have power to form a corporate conscience or common mind about property in the men of to-day—to act both as a secure basis of policy in promoting reform and as a ground of appeal to the Christian conscience.

Mr. Hobhouse shows the way in his distinction between property "for use" and property "for power." This is a most fruitful distinction. Aristotle was the first to make the familiar appeal on behalf of private property that it is necessary for the free development of the higher life in the individual, and is the most effective stimulus to character and personal exertion. We are all familiar with the argument, and we feel its force to the full. The average man wants the sphere which he can call "his own" to stimulate him to develop himself, to get room to move freely and realize what he is capable of. Now Aristotle is able calmly to contemplate this self-realization as the privilege of the few—the freemen or citizens—while the larger mass of the inhabitants of his city are to be slaves, men conceived to exist not for themselves but for their masters. To us this distinction is intolerable. We are bound to believe that, whatever inequalities must subsist among men, every man has the divine and equal right to realize himself. The success of a civilization for us must be

measured not by the amount and character of its products or material wealth, nor by the degree of well-being which it renders possible for a privileged class, but by the degree in which it enables all its members to feel that they have the chance of making the best of themselves, to feel that an adequate measure of free self-realization is granted them. On this ground then our civilization is open to the most serious indictment. Property "for use"—what a man needs for true freedom, what even at the utmost he is able to use—is a very limited quantity on the whole. Very speedily, as it expands, it becomes "property for power": it becomes at last the almost unmeasured control by the few rich, not of any amount of unconscious material, but of other men whose opportunity to live and work and eat becomes subject to their will. That is where property has so manifestly gone wrong. In our own civilization we find vast masses of men and women who cannot be reasonably described as having any adequate measure of property for use. They cannot go out into life with the security of free men. They cannot, within reasonable limits, control their own destiny. They cannot realize themselves. They are "hands" for other men to use. The conviction rises in our mind as we contemplate the facts that something has gone very wrong with our tenure of property: that we need by peaceful means, and, if it may be, by general consent, to accomplish such a redistribution of property as shall reduce the inordinate amount of "property for power" in the hands of the few and give to all men, as far as may be, in reasonable measure "property for use." Then we ask ourselves, Are we in entertaining such an ambition violating any sacred right of property? We interrogate the philosophers, and we find under Dr. Rashdall's guidance that we can discern no absolute right of prop-

erty. "Its justification must depend upon no *a priori* principle but upon its social effects." We may say that a man has a divine right to realize his being: and this involves a certain right of property. But this goes but a very little way. Moreover, from the first man is a social animal. He realizes himself in communities. Property is made possible and secured by the community, which becomes in developed society the State. The State exists to enable its members to develop a worthy human life. A State must be judged, and should judge itself, by its tendency to generate in all its citizens a worthy type of life—to make them happy and progressive beings who feel that life is worth living. If at any stage it finds that the institution of property, as it exists, is fostering luxury and exaggerated power in a few, and enslaving or hindering the many, there is nothing to prevent it rectifying what is amiss. Property is relative to character: it is a means towards a good life, and a good life for all men. The State is free to alter its laws or its methods so as to secure its better distribution. As it is only the State which enables a man to become rich, so, if wealth proves inimical to the general development, the possessors of wealth have no legitimate claim to urge against the State taking measures to redress the balance, provided that the end which the State has in view is the true end —the real welfare of all its citizens. No doubt, as Mr. Lindsay shows, it is a difficult process to guard the sacred right of personal freedom against State tyranny on the one hand, and on the other to prevent the excess of individualism which means in practice the enslavement of the many to the few. But because it is difficult to direct human life aright individually or socially, we must not, therefore, abandon what alone makes human life worth living—the effort to realize a worthy ideal.

And what has religion—the Christian religion which exists to teach men that the end of their being is to serve the glory of God and the real good equally of themselves and of their fellows—to say to the institution of property? The Old Testament, on which Christianity is based, describes the theocratic community; and its moral principles have, as the Christian is taught to believe, a permanent validity—to be developed and not to be superseded. Well then, a man cannot read the law and the prophets from the point of view of one who would think rightly about private property, without seeing how, alike in the institutions of the law and in the teaching of the prophets, the intention is to recognize it, indeed, as having God's sanction, but to restrain it by a peremptory insistence on the right of God, the only absolute owner, and the rights of our fellow men, especially the weaker and poorer members of the State. Much that we are accustomed to hear called legitimate insistence upon the rights of property, the Old Testament would seem to call the robbery of God, and the grinding of the faces of the poor.

Later the teaching of Jesus Christ about the worth of each individual, the poorest and the weakest, expressed itself in the Christian idea of brotherhood, and the institution of the Church as a body in which "if one member suffer, all the members suffer with it." This idea and institution carried with it a doctrine of property, which echoed our Lord's strong disparagement of wealth, and was in theory and practice highly communal. The Christians were a persecuted body, who had no power of controlling the law or practice of the society of the Empire; but within their own "voluntary" society the claim of the brethren was paramount. The scoffer, Lucian, notes this as their characteristic: "Their leader, whom they yet adore, had persuaded

them that they were all brethren: in compliance with his laws they looked with contempt on all worldly treasures and held everything in common," or (as this is more accurately expressed), "It is incredible with what alacrity those people defend and support their common interests—the interest of any of their number—and spare nothing, in short, to promote it." Thus the Christian church became a corporation for mutual support, refusing the idler who would not work, but for the rest accepting the maxim that they "must provide one another with support, with all joy: furnishing those who lack occupation with employment, and thus with the necessary livelihood. To the workman, work; to him who cannot work, mercy (or alms)."[2] There is no doubt that this profound sense of the communal claim on private property and this practically effective sense of brotherhood produced an economic condition in the Christian community which was one main cause of its progress. The Fathers use the strongest language against any "right of property," which resists the claim of the needs of the brethren. Dr. Bartlet writes with a studied moderation about all this, and shows no little insight in accounting for the disappointing fact that when Christianity became the established religion, it did so little to impress its ideal of property upon the law and custom of the later Empire. But certainly the church bore the strongest witness to the idea of property as a trust for the common good. And in no way is this more strikingly shown than in its identification of "charity"—that is, charity in the narrower sense of almsgiving—with justice.[3] The needy can claim our alms as a matter of justice: to retain more

[2] Pseudo-Clement, *Ep.* 8; see Harnack, *Expansion of Christianity* (Williams & Norgate), i. p. 218.

[3] This is especially but not exclusively characteristic of the Westerns —Cyprian, Lactantius, Ambrose, etc.

property than we strictly need is a violation of justice, and not merely a failure to perform a work of supererogation. Lord Hugh Cecil has recently drawn a strong distinction between charity and justice. He says "originally the relief of the poor was based on the duty of Christian charity, and not on any supposed right of justice."[4] As far as Early Christianity is concerned the distinction here drawn would be repudiated. To withhold charity is to refuse justice. And when we pass from the Early Christian period to the Middle Ages, when the whole fabric of society was in Christian hands we find the old principle asserted. Charity in the form of tithe, and more generally distribution of wealth to need, is still asserted to be justice and the withholding of it injustice. "No man has really the *right* to hold for himself more than he needs." And the Stoic principle of a law of nature behind and controlling the law of the State, is adopted in dealing with property. Private property, and laws maintaining the rights of private property, are necessary as a protection against the lawlessness of fallen human nature; but behind the laws is the original principle by which all things are common, which gives to every man his *right* to what he needs, so that even stealing, St. Thomas maintains, is no stealing if the need is sufficiently urgent, and property has no claim which is valid against the natural or fundamental right of every man to enjoy the bounty of the Creator. It ought to be added that in mediæval society a very large share of property was held by the religious houses, who at their best maintained in practical action the principle of voluntary poverty, and at their lower level exhibited on the largest scale the principle of communal ownership within their own membership and for the sake of the poor.

[4] *Conservatism* (Williams & Norgate), p. 172.

Amongst the Reformers there were some who maintained the old Christian instinct unimpaired. No nobler practical insistence on the true conception of property can be found than is to be found in the sermons of Hugh Latimer; but, on the whole, the candid reader of Mr. Wood's most interesting essay, with its valuable catena of quotations, will feel that Protestantism in general, and not least our English Protestantism, embodied an excessive individualism,[5] as in other respects so also in regard to property. It abandoned much of the content which the Bible or earlier Christianity had given to the commandment, "Thou shalt not steal." It ushers in the epoch in which the doctrine of the right of property is largely stripped of its old limitations.[6]

What are we to say, then, about the still dominant individualism, the assertion of an almost unlimited right of acquiring, retaining, and perpetuating property, which breaks out against either any strongly urged moral claim for voluntarily giving better conditions to the poorer workers as an act of justice, or

[5] It may be the case that the greater individualism in the conception of property which characterizes Protestant literature would be found to be more or less characteristic of the thought of Europe generally, whether Protestant or Catholic, in the sixteenth and seventeenth centuries, and to be due, not only to Protestant tendencies, but to a widespread change in the economic structure of society.

[6] But out of the heart of the eighteenth century we do well to recall that Bishop Butler, in defending the right of the lay holder of what had formerly been Church property to retain his property with a good conscience, does so on grounds which involve the principle that there is no absolute or perpetual right of property. "Property in general is, and must be, regulated by the laws of the community. . . . Every donation to the Christian church is a human donation and no more; and therefore cannot give a divine right, but such a right only as must be subject in common with all other property to human laws. . . . The persons who gave these lands to the church had themselves no right in perpetuity in them, consequently could convey no such right to the church. But all scruples concerning the lawfulness of laymen possessing these lands go upon the supposition that the church had such a right in perpetuity in them; and therefore all those scruples must be groundless as going upon a false supposition." See a letter of Bishop Butler's in Fitzgerald's edition of the *Analogy*, Preface, p. xciii.

against any action of the State which tends in the direction of a more equitable distribution of the proceeds of industry?

We are bound to say that, looking at the matter philosophically, it has no validity. The particular laws which at any moment regulate the holding of property, or determine the burden which it is to bear for the public good, are laws of the State; it is the State which alone enables property to be gathered and held; and there is no legitimate claim which property can make against what appears to be the welfare of the State. It is hardly possible to state the principle too strongly. We are only saying the same thing in other words if we say that the tenure of property in any community must be judged by its tendency to promote what alone is the real end of civil society—that is, the best possible life for man in general and all men in particular. If it appears that the conditions of property-holding at any particular period sacrifice the many to the few, and tend to starve the vitality or destroy the hope or depress the efforts of masses of men and women, there is no legitimate claim that property can make against the alteration of conditions by gradual and peaceable means.

Can such a charge be made out against the present conditions under which in our country property is acquired and held or handed on? I fear that it can be made out and pressed home.

The stimulus of unlimited acquisition, it is sometimes pleaded, is necessary to bring out of men their greatest capacity and energy. If you restrain a man's freedom to acquire, you damp his energy. But what about the energy of the masses of men who can acquire no property or no sufficient property to give them secure status and hope? If you go some way towards equaliz-

ing opportunity, as between one man and another, will you not stimulate a thousand energies and interests to one which you may check?

The most formidable form of this plea is that which represents to us that in modern industry the most important factor is the brain of the great organizer; that this will only work under the stimulus of unlimited acquisition of wealth and personal power; and that if in our own country this power of unlimited acquisition is restricted, the men of greatest initiative will go to countries where no such restrictions exist, and our own industrial life will suffer. This is a terrible argument —the argument that what is most powerful in men cannot be induced to act in the public interest but only on the motive of unrestricted selfishness. There are many experiences in modern industrial life to be set against it. It may, however, be a motive for proceeding gradually in reforming industrial conditions, and a ground for strengthening international fellowship among reformers, so that similar tendencies may be apparent in all countries. But it can never be a ground for tying the hands of justice; and it leaves altogether out of account the stimulus to industry which is to be anticipated in any country in which more and more men in the industrial world can feel that it is worth while to do their best.

Property in some sense is necessary for personality. That is certainly true. Let us therefore be careful to guard against any invasion of the real liberty of persons, let us maintain the right of property "for use." But how overwhelming is the indictment against present conditions in their bearing on personality, the personality of the mass of our countrymen. On this line Dr. Holland brings the series of essays to a conclusion with an argument which seems to me to be of over-

whelming force. And he calls attention to the root fact about personality that it is in its fundamental being a *social* thing—a relation of one individual to another; and that a legitimate development of personality involves a legitimate development of fellowship.

The Roman poet contrasts the extravagance of individual wealth in his own time with what he discerns to have been the ancient Roman ideal:

> Privatus illis census erat brevis,
> Commune magnum.[7]
>
> Their private property was small: what was in common, that was large.

These words echo in our mind. We cannot get rid of the feeling that individualism in property has overdone itself: that it is working disastrous havoc: that the cry for justice from masses of men and women is a cry which is legitimate; and if it is a legitimate cry, then most certainly it behoves us not to wait till its claim can be enforced, grudging every inch that is yielded unwillingly to "labour" under the pressure of compulsion, but rather as free men to face the facts and gird ourselves willingly for reform, even if it entail for us personal sacrifice.

And here comes in the claim of our religion. We have been unfaithful to its ancient instincts and to the spirit of our Master. Speaking of the sixteenth and again of the nineteenth century, and referring, I think, to Europe at large, Harnock says: "The church was generally on the wrong side, a fact which still rankles in the memory of the nation, and is not without influence on the economic struggle of the present day."[8] The modern church has generally been on the wrong side.

[7] Horace, *Carm.* ii. 15.
[8] *The Social Gospel* (Williams & Norgate), p. 63.

Can we deny it? Can we deny that its conception of property and of the obligations of property, and its attitude towards the real needs of the masses of men who have held no property, or received no adequate supply of what life needs for its development, have been wholly different from what the teaching of the prophets and our Lord, and our Fathers in Christendom, would have had them to be? In this respect, as in others, our religion to-day is on its trial. The place it is to hold in the minds of men in general and the genuineness which can be ascribed to our profession of brotherhood, depend on our courageous readiness to think again what our Christian principles mean. What do we honestly believe in God's will—Christ's will—for men? What do we mean when we say that we hold our property as stewards for God's purposes? Do we really believe that covetousness and the desire to accumulate wealth—yes, and wealth itself—deserve all that our Lord and His apostles said of them? Do we really acknowledge that if we are failing to redeem our brothers and sisters from misery and want, we are failing to redeem Christ? And if we genuinely mean what we should mean, and believe what we say, are we, as Christians, ready for a deep and courageous and corporate act of penitence and reparation?

I

THE HISTORICAL EVOLUTION OF PROPERTY, IN FACT AND IN IDEA

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SUMMARY

1. The general notion of property. It is a right of control over things which society recognizes. It may be absolute or partial, held by one person or many, or by a community, but it must be exclusive as against others, and it must have some permanence.

2. The connection of property with rational purpose, and with freedom.

3. The opposition, in this regard, between property held for use by its owner, and property as a means of controlling the labour of others.

4. Property is a recognized institution in all known societies; but in the simpler societies it is rarely, if ever, a source of "power." This side develops with the advance of material civilization, and culminates in the modern inequalities of wealth.

5. Of theories of property we may distinguish (*a*) the Communistic, which really attacks the whole principle of property; (*b*) the Labour theory; (*c*) the Individualistic theory, which finds it essential to character; and (*d*) the Socialistic theory. Need of discrimination between property for "use" and for "power," and of the extension of certain forms of State ownership in the interest of personal rights.

I

THE HISTORICAL EVOLUTION OF PROPERTY, IN FACT AND IN IDEA[1]

A satisfactory account of the development of property in general has not yet been written, and perhaps in the present state of our knowledge cannot be written. In no department of the study of comparative institutions are the data more elusive and unsatisfactory. The divergence between legal theory and economic fact, between written law and popular custom, between implied rights and actual enjoyment, enables one and the same institution to be painted and, within limits, quite honestly and faithfully painted in very different colours. The legally minded historian will lay stress on forms or principles which have very little bearing on the actual life of the people. The economic historian, impatient of these subtleties, will ask us to look at the actual working of the institution, only to find that by some turn of events the dormant legal principle is awakened, and becomes a potent and perhaps deadly force in the working of a system. The theorist with a generalization to defend can always, by judicious selection and omission, quote travellers, ethnologists, early codes, or points of contemporary custom on his side; for he is singularly unfortunate if he cannot find something either in the every day working of the institution or in its theoretical

[1] In this paper the social functions of property are examined by the standard of purely humanitarian ethics.

implications, which, by ignoring other aspects, may be made to tell on his side. But any one who considers the extraordinary difficulty which our own social historians find in presenting a perfectly just picture of landed property in England in any one century, to say nothing of its development through the centuries, will realize the kind of caution which science will demand in reconstructing the true character of property among a simple people who have no written documents from the statements of travellers, even if they are skilled observers.

A single illustration may suffice. In a simple community practising extensive agriculture a man tells a traveller that this is "his" land, and that his neighbour's land. The statement is duly printed, and in the end finds its way into a volume on the development of property as evidence of the individual ownership of land, without so much as a note to show the reader whether there has been any enquiry into the conditions of tenure. Another observer may state with equal truth that the land "belongs" to the tribe, and this remark figures in a work of different tendency as equally good evidence in favour of primitive communism, though there may be nothing to show in what form the land is actually used by the members of the tribe. In some of the Australian tribes good observers tell us that there is no such thing as private property in land.[2] Among others, other writers assure us that land neither belongs to a tribe nor to a group of families but to a single male.[3] Does the difference really lie between the tribes or between the observers? Some light may be thrown on the question and on the general difficulties of method

[2] Spencer and Gillen, *The Northern Tribes of Central Australia*, p. 27, etc.

[3] *E.g.* Grey and Eyre, cited in Hildebrand's *Recht und Sitte auf den verschiedenen Kulturstufen*, p. 4.

by a passage in Mr. Howitt's classical work.[4] Among the coast tribes of New South Wales it appears that the land wherein a child is born is "his" to hunt in, and even a father or mother may thus "acquire" land when a child is born to them outside their own locality. "The place where a man is born," said an old man, "is his own locality and he has always the right to hunt over it, and all others born there have also the right to do so." It may safely be said that this is one of the very last forms of title that would occur to a civilized enquirer. The effect of his examination of any single native would be to persuade him that that native owned the land where he was born. It would only be if he happened to examine several born in the same district that he would discover that many men called the same land their own, and that their property in it could neither be described as communal nor as individual.

Where data are so difficult to ascertain, generalization must be unusually precarious. At best it may be possible here to set out a few salient points which may serve to throw light on the very diverse functions of property in the social system, the variations which the conception of property has undergone, and the manner in which these are connected with the general development of society. With this object we will briefly consider (1) the general notion of property, (2) the psychological conditions on which it rests, (3) certain aspects of its social functions, (4) some of the forms which property has assumed at several stages of social development, and (5) the light thrown by these considerations on certain typical theories of property which will be briefly reviewed.

[4] *The Native Tribes of South East Australia*, p. 83.

I. The Notion of Property

For purposes of social theory property is to be conceived in terms of the control of man over things. Man needs food to eat, implements to procure it, land to work upon, and for that matter to stand and move upon. That he may supply his needs at all, he must at least temporarily control the implement that he is using, and the spot on which he is working. But that this temporary control or possession may become property, certain further conditions are essential. His possession must in the first place be recognized by others, *i.e.*, it must be of the nature of a right. In the second place, with regard to things of a permanent nature, his right must also have a certain permanence. He must be able to count on the use of the thing. His right over it, though it may limited in time, must not be confined to the moment when he has it in his hands, but must be respected in his absence. Thirdly, his control must be exclusive. If he shares the control of the thing with others, then it is not his private property. But if he and his partners control it to the exclusion of the rest of the world, then it is their joint or their common property. If on the other hand all the world alike can use it, then it is not property at all. Property may be private, joint, or common, but it must vest in some person or persons, and it must be exclusive of other persons.

Exclusive control, however, it must be borne in mind, does not necessarily mean complete control. A may control a thing for one purpose to the exclusion of all the world, B among the rest; yet B may control that same thing for another purpose to the exclusion of all the world, A among the rest. When I take a room in an inn for the night, it is "mine" for the night to the exclusion of any one else. But the landlord has perma-

nent rights in the room which are exclusive as against me. It may be objected that we ought to say that the landlord has the property, while he gives me only the right of using it. This may seem to accord better with usage, but in the final analysis of property it seems desirable for several reasons to insist that all forms of control are species of one genus. The control over a thing may be complete or partial, and the partial control may ascend by so many gradations till it becomes complete, that it is difficult to know where to draw a line. The main distinction of principle seems to be that between control of a thing for use and enjoyment, and control for the purpose of disposal, sale, exchange, or bequest. The latter kind of control may indeed be regarded as essential to property in the sense of ownership, but to restrict property to this sense would be to leave the manner of its use and enjoyment out of account. A man may only be life-tenant of a landed estate, its disposal after his death being determined by law or the decision of the community, or a previous owner's will. Yet while he lives the man may have complete control of its management, and from generation to generation the same conditions may recur. To leave the life interest out of account would then be to divorce the conception of property from the main conditions of practical control.

It will be seen then that property is a principle which admits of variation in several distinct directions. It is a control which may be more or less fully recognized and guaranteed by society. It may be more or less permanent, more or less dependent on present use and possession or enjoyment. It may be concentrated in one hand, or common to many. It may extend to more, or to fewer, of the purposes to which a thing may be put. But that the control may be property at all, it

must in some sort be recognized, in some sort independent of immediate physical enjoyment, and at some point exclusive of control by other persons. Within these limits there is room for indefinite variation in many directions, and the variations are not necessarily dependent on one another.

2. The Psychology of Property

These elementary considerations help us in determining the psychological basis of property, as to which a mere note must here suffice. Some writers speak of an instinct of property. But this is to simplify overmuch. No doubt the higher animals have a rudimentary property. The bone which your dog has once seized is "his" bone. He resents the attempt to take it from him with an excitement which does not show in respect to a bone which he has not yet taken. My tame jackdaw steals my pencil and makes off hurriedly with it with all the flutter of conscious theft, or he will play a game with it, dropping it provocatively and picking it up smartly, or going straight at my fingers—the wretch!—when I attempt to recapture it. What happens in these cases seems to be that the interest which a class of objects excites—either through their use for food or, in the exceptional case of the jackdaw, through their inherent attractiveness as nice, bright, peckable things, easily portable in one's bill—is focussed by the first act of seizure or even of attention on a particular object, and that thereupon all the train of feelings or reactions attendant on, or subsidiary to, its use are called forth in response to that object rather than others. This constitutes the mental appropriation of an object; and not only for man, but for the dog with its buried bone, and the bird with its nest, and the jack-

daw with its "cache," the appropriated object becomes a permanent basis of action, something that it can count upon and go back to at need. For man, at all events, his property is above all something that he can rely upon as a permanent home, permanent means of subsistence or enjoyment. Property is thus an integral element in an ordered life of purposeful activity. It is, at bottom for the same reason, an integral element in a free life. This distinguishes property from mere adequate provision with the material goods. A man who has his meals set down before him all nicely prepared and measured out by expert authority may be well nourished; but as he has no property beyond his actual plateful, so he has no freedom but to take it or give it to the cat. The man who has a shilling in his pocket is free to eat or drink what he likes up to the limit of the shilling. He may not get so good or sustaining a meal, but he gets his own choice. The man who has a weekly wage is, other things being equal, more free than a man paid by truck, and a man who works on his own land with his own implements is more free, other things being equal, than the wage-earner. At each point the more a man can count on his own exertions applied to his own property, the more he can direct his own activity on the lines which suit his taste. Some measure of property appears, in short, to be the essential basis of liberty; and conversely the sense of freedom in enjoyment ranks along with the sense of security and permanence among the complex constituents of the pride and joy of ownership.

3. Social Aspects of Property: Use and Power

Unfortunately what is liberty for one man is often the negation of liberty for another. In a developed

society a man's property is not merely something which he controls and enjoys, which he can make the basis of his labour and the scene of his ordered activities, but something whereby he can control another man and make it the basis of that man's labour and the scene of activities ordered by himself. The abstract right of property is apt to ignore these trifling distinctions; and theories of property are founded, for example, on the right of the labourer to his produce, which completely ignore the fact that as industry develops, the most conspicuous function of property is to secure a part of one man's labour-product for the benefit of another. Both the history and the philosophy of property turn on these two relations of the institution to social life as a whole. On the one hand property is the material basis of a permanent, ordered, purposeful, and self-directed activity. Such upon the whole is the property which a man directly uses or enjoys by himself or in association with his nearest and dearest. On the other hand property is a form of social organization, whereby the labour of those who have it not is directed by and for the enjoyment of those that have. In this sense the control of the owner is essentially a control of labour. It is that "alchemy" whereby the "Seigneur lounging in the Œil de Bœuf" extracts the third nettle from the gatherer in the fields and calls it rent. It does not essentially consist in the handling and use of the material thing. It is consistent with as little knowledge of the thing as the average shareholder of an Argentine railway possesses of the whereabouts of "his" track, who knows that the dividends come in with fair regularity every six months, though he might have difficulty in locating the terminus of the line within 500 miles.

Now these two functions of property, the control of

things, which gives freedom and security, and the control of persons through things, which gives power to the owner, are very different. In some respects they are radically opposed, yet from the nature of the case they are intertwined, and their relationship can be traced through the history of the institution, some phases of which may now be indicated.

4. Phases of the Development of Property

In the general sense here given property is found in every known society. A man's clothing, weapons, and tools, a woman's ornaments, the family hut or cave, or at least a marked portion thereof,[5] are from the first recognized as belonging to the man, the woman, or the family. The inventory of a Vedda's very simple personal estate is given by Dr. and Mrs. Seligmann:

> One axe, bow and arrows, three pots, a deer skin, a flint and steel, and supply of tinder, a gourd for carrying water, a betel pouch containing betel covers, and some form of box for holding lime, also a certain amount of cloth besides that on the person.

To these personal belongings a man has a right in the sense in which rights are recognized by simple societies. Theft would at lowest be resented by the individual, and there would be a customary form of reparation which he would exact. As soon as any sort of public court is formed it will deal with this right and the wrongs arising out of it, on the same general

[5] *E.g.* In the "Long House" of the Iroquois and other North American Indians. Dargun, "Ursprung und Geschichte des Eigentums" (*Z. f. vergleichende Rechtswissenschaft*, Bd. v. p. 37), insists on this point. The Vedda families, according to Dr. Seligmann, have their proper place in the joint caves.

principles and by the same methods as with others.[6] To discuss these questions further would be to examine the social basis of rights in general, which is foreign to our purpose. Property is from the first, to all appearances, a right recognized much in the same fashion as rights of the person or marital rights are recognized, and on this side the development follows the same general lines in all cases. The important point for us to consider is what sort of things are objects of property, and whose property they are; or in more ultimate analysis, What sort of exclusive control is exerted over things, and by whom?

Now among the simplest known tribes, who live by gathering fruits, digging roots, and hunting, the possible objects of property may be divided into two categories. On the one hand there are the trivial personal belongings that have been mentioned. On the other hand there is the land, uncleared and uncultivated, but the one great means of subsistence. Of the first kind there is private ownership; but it will be apparent that the life of the little society will be determined principally by liberty or restriction in the matter of hunting or collecting food, that is to say, by the ownership of the land. How then is land owned in these communities? Is it communal or is it personal? If we could answer this question clearly and unambiguously, we should get as near as the evidence is ever likely to bring us to a solution of the problem of primitive property, and in particular of the vexed questions surrounding the nature of the village community. Un-

[6] In nine cases out of ten the "thievishness" attributed by travellers to simple peoples is seen on careful reading to mean that they disregarded the proprietary rights of the whites. Could these peoples describe the morals of the whites, what might they say of the civilized man's regard for their property? It is true that in some cases belongings are taken without leave and without censure, but these are certainly the exception.

fortunately the evidence is not altogether clear and unambiguous. In some instances the communal tenure of the land is beyond doubt. The case of the Central Australians already quoted may serve as an instance. In the first place, among these people the tribe has its known area, with boundaries recognized by the neighbouring tribes. Within the tribe there are divisions and subdivisions, the ultimate unit being a "local group" of a few families—in one tribe forty individuals constitute the largest existing group—who roam about an area which, like that of the tribe as a whole, is clearly defined. Within this area there is no individual property. It is free to all members of the group, but no one else may hunt in it without permission, and the boundaries are habitually observed. Moreover, ownership is associated with the centres within the area in which the souls of ancestors who lived in the Alcheringa—the great long ago—are deposited, which souls are reincarnated in living members of the group. Within the terms of our definition it is clear that this area is the common property of the group. Writers who deny communal property altogether among the hunting peoples can only deal with a case like this by calling it not property but sovereignty. It is true that the group is substantially an autonomous unit, but the only deduction that can be drawn from this is that political control—if we may use such an expression here—and the right of property are not at this stage differentiated. Indeed, in the case of land this differentiation is not completely effected till a relatively late stage in social development, and it may be doubted whether a complete differentiation is ever possible without socially disastrous consequences. In any case the effective control of the land is in the hands of the group. No single member has an exclusive right

against the group, while the group has an exclusive right against all others, and this right is recognized by the others. We cannot refuse to call this common ownership; and if the same system obtained among all hunting people, the starting-point in the development of property in land would be perfectly clear.

But this is not the case. The necessities of hunting and the collection of food may lead to further subdivision, and we find cases, both in Australia and elsewhere, where land is owned by an individual hunter and his family.[7] We saw above that same ambiguity may attach to the evidence in these cases. Let us take an instance where the report is precise. The Veddas are organized in very small groups of families closely related to one another. Each group has its definite hunting area, but within it each man has his own land. This land passes by regular inheritance, or may be given to a son or a son-in-law. It may also be alienated. But whether it is given to the natural heir or to any one else it can only be with the assent of every adult male of the group.[8] In this instance it is clear that immediate ownership is private, and that

[7] In ten Australian tribes or groups common ownership is pretty clearly indicated, and in five family ownership. But several authors, *e.g.*, Lang, Grey, Eyre, Curr, assert individual ownership. The evidence, however, is often conflicting and in some cases we can only suppose a kind of dual ownership. Thus J. Browne, writing in Dr. Petermann's *Mitteilungen* for 1856, describes four West Australian tribes which he knew well, as having land possessed by families and individuals; but he remarks that it is difficult to say in what private property consists, as the tribe roams the whole area without distinction, while if a stranger trespasses, it is resented and a fight ensues. Perhaps the only prerogative of the owner, he says, is to take the lead in this resistance. As to family property, it must be borne in mind that the Australian local group is often so small as to be little more than an enlarged family, so that family and group ownership pass into one another. It should also be noted that rules for the division of the spoils of the hunt are common in Australia. Of twenty cases of which I have information, the food is divided between the whole camp in ten; between the relations, including the wife's relations, in six; while in four the rules are not specified.

[8] Seligmann, *op. cit.* pp. 107, 111.

the eminent ownership is in the group. The control of the group secures the important point, that access to the land will be maintained for those who are by birth its members. As long as this principle is maintained land may be communal property, or it may be personal, or the two principles may be intermixed, but in any case it will be held for use and not for power. Its tenure will be occupational, and I think we may provisionally conclude that this is the general characteristic of primitive property in land, that is to say, of the one essential basis of production in the lowest stages of development.[9]

This suggestion is confirmed when we consider the beginning of agriculture. Land at the outset is cleared for the raising of a crop. Its fertility is soon exhausted, perhaps after a single harvest, and the little community moves on to another spot. But the whole amount brought under cultivation at any one time is a very small fraction of the waste belonging to the community and hunted over by any of its members indiscriminately. No difficulty is made about the right to clear

[9] Among fifty-five tribes of "hunters and gatherers" as to whose property system I have found some account, forty-four appear to hold land either as property of the tribe or of a smaller group—clan, village, or band—within the tribe. Of the remainder five are the Australian tribes in which ownership is attributed to the family, and there are left six cases of individual ownership, to which perhaps a few more Australian cases ought to be added. In two or three instances ownership is attributed to the chief, but this seems to be rather as the representative of the community than as true personal property.

In a few cases special clans monopolized the land or the best part of it. Thus among the Thlinkeets, according to Swanton (*Smithsonian Annual Reports*, xxvi), certain clans had no land of their own, and either used the common land of the tribe or had to wait until the more fortunate clans had done with their land for the season. Among the Chilcotin, Carriers, and Western Shushwaps land was the property of the nobles. In the two former cases, according to Father Morice (*Proceedings of the Canadian Institute*, 1893), the heads of non-noble families might hunt on the land with the chief's permission. In the latter, according to Teit (*Report of the Jesup Expedition*), the nobles charged rents on the commons, fined them for trespass, and drove them

a field, but whatever one man has cleared belongs, at least while he tills it, to himself and his family. At this stage private property can hardly be more than a possessory right, for when the last crop has been taken the clearing is really of less value than the waste. "Arva per annos mutant et superest ager." There is uncleared land in abundance. It belongs to the community and is open to any one to break up.[10] Thus there is temporary private possession and permanent common ownership. But on this point more than one possibility arises. Agriculture may become a collective industry, fields being tilled and the harvest gathered by the common labour, as among the Karaya tribes,[11] and a special store may be set apart for the necessitous, as among the Creeks. But more often, as tillage develops and becomes more intensive, the temporary occupation becomes permanent. The neces-

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off to the more distant tribal grounds quite in the style of modern civilization. Among the Tsimshian, according to Boas, a clan retained the rights to its land even though it moved away; but I do not know whether it could charge anything for its use by others. All these instances are from the relatively developed hunting and fishing tribes of the west coast of North America, where class distinctions had come into being.

In the Torres Straits land may be held in individual ownership and is not infrequently lent or let for a share in the produce, *e.g.*, a garden is lent on the understanding that the first-fruits go to the owner (Haddon, *Cambridge Expedition*, vol. iv.). One group of these islands is non-agricultural, and private property also obtains here, but whether the leasing system is also known is not clear to me.

The figures given above are from an enquiry which is not quite finished and needs final revision, but are not likely to require any such modification as would invalidate the general rule that, with a few exceptions such as those mentioned, land in a community of hunters and gatherers is accessible to all members of a social group. This, it may be remarked, would hold even in the Australian cases where ownership is assigned to the individual. There is nowhere any hint of a landless class.

[10] Compare the remarks of Von Martius, *Zur Ethnographie Amerikas*, on Brazilian land tenure, which are sufficiently clear, notwithstanding the criticisms of Dargun (*Entwicklungs-Geschichte*, pp. 51-54).

[11] Ehrenreich, *Veroff. Königl. Museums*, Band i.

sity of letting the land lie fallow may be met by a two-field or three-field system, and the recurrent possession of the same plots hardens into permanent ownership. The holding, however, may still be that of the family or of the kindred rather than that of the individual; and the kindred, living together in a Long House with stores in common, constitute a smaller and stricter communism within the community as a whole.[12] But whether through the break-up of the kindred or as the direct result of the growth of cultivation,[13] land may be recognized as the private property of the man who clears or tills it, and may be alienated, sold, or bequeathed.[14] Immediate ownership of the cultivated plots thus passes to the kindred, the family, or the individual. Still the community may retain certain eminent rights and certain powers of control: for example, alienation to an outsider may be forbidden, or allowed only by common consent of the original group,[15] while the right to acquire new land by clearing requires a more definite assent from the community or chief as it becomes more valuable.

[12] The Iroquois lived in joint houses containing from five to twenty families and made common store of the food, which was duly distributed among the component families by the superintending matron. The Creeks lived in clustered houses, practising a similar communism (Morgan, *Houses and House Life, etc.*, pp. 64-68).

[13] The evidence does not justify us in laying down a fixed order leading from the community through the kin to the individual. It is more likely that development followed a different course among different people.

[14] Thus, among the Kayans of Borneo, according to Niewenhuis (*Quer durch Borneo*), unbroken land is accessible to any one, but land once tilled passes into private ownership and may be let or exchanged. Among the Hill Dyaks, according to Ling Roth (*Natives of Sarawak*), land is abundant within the tribal limits, but very little is individual property, except the private plots near the houses, which are saleable. The locality of the farms is generally settled by the council of the tribe, so that one road may serve all. Among the Sea Dyaks a man acquires a title to the land by clearing it.

[15] So in early mediaeval Germany, Schröder, *Lehrbuch der deutschen Rechtsgeschichte*, pp. 207-8.

Again, the community may retain a general control of cultivation, and may remain the guardian and ultimate court of appeal on questions of the rights and duties of its members, and on all customs regulating the common life. On this side, the old principle survived into the manorial courts of our mediaeval system. Furthermore, the cultivation of the arable is not self-sufficient. As agriculture develops it requires beasts of burden, and a right of grazing on the common pasture and the use of the waste are essential to the maintenance of the tillage. But the pasture and the waste remain common; and if there is meadow land, its use is duly apportioned by the community in accordance with the needs of each holding. Lastly, if holdings become unequal and unsuited to the needs of families, there may be a conscious effort to maintain the partnership by a system of periodical redistribution, as in the case of the Russian *mir*.

Systems like these, though compatible with a considerable development of individual ownership, are still so far primitive that they associate property, not with power, but with use.[16] At least until property begins to press on the means of subsistence, every boy on growing to manhood will have the basis of his life-economy secured to him by the social structure. He will succeed to his share in the family land, with the right to pasture, meadow and waste, which it carries with it; and if, through the growth of the family, the lot has become too narrow, he will readily gain the consent of the community to an additional clearing in the waste. If the pressure of population has begun, it is more likely to lead to trouble with neighbouring

[16] In more than one hundred descriptions of land tenure among agricultural and pastoral peoples of simple culture, I have only found ten cases in which a system of letting or leasing land is suggested.

peoples than with landlessness and poverty at home. Its effects will be seen in tribal unrest, migrations, and wars of conquest. Here then is one possible root of disorganization. But there are others. Men are by nature unequal, and one family will thrive while another decays. If debt-slavery—particularly for non-payment of the wergild—is recognized, men will fall into the hands of creditors for whose benefit in future they may have to till the land, and prisoners of war may be put to the same use.[17] Whole tribes, indeed, may become tributary to a stronger people.[18] Within the community the growth of military organization involves the elevation of the chief and his trusted followers into a nobility standing above the mass of the free men, and this elevation implies at some point or another a corresponding depression. Some one must serve, if some one else is to have leisure to be a nobleman.

But apart from these tendencies, there is another economic movement on which we have not yet touched. In some regions of the world, particularly on the steppes of Eastern Europe and Asia, the pasture land provides opportunity for a different form of development from the hunting stage. The possession of flocks and herds is far more free from communal restrictions than the tilling of the soil; and even if the herds are family property, the power of the father among these peoples is often so great that he deserves to be called the true owner. But what is more important, property in flocks and herds can wax and wane with ease and celerity; and in pastoral societies accordingly, the dis-

[17] For serfs of this type among the Germans, see Tacitus, *Germania*, 25, Schröder, *op. cit.* pp. 46, 47.

[18] Even a tribe of hunters like the South American Mbaya hold the neighbouring Guanas in a form of serfdom, compelling them to till land for them.

tinction of rich and poor readily makes its appearance. Some pastoral tribes indeed are slaveholding. In others the poorer members of the community sufficiently supply the need.[19] The definite appearance of the man who is neither provided for as a slave, nor by his own hereditary share in the common basis of subsistence, seems to be especially associated with the pastoral stage, and in agricultural societies to be at least largely influenced by the pastoral element. It was in the end the enclosure of the pasture and the waste which destroyed the remains of the common field system in this country and achieved the ruin of the small holder.[20]

This slight sketch may serve to show the general character of the economy from which the mediaeval organization of Western Europe was evolved. The whole problem of the antecedents of the manor is still entangled in endless controversy; but a survey of the anthropological data on the whole confirms the view that at the back of the entire process we must place "a village community of shareholders which cultivated the land on the open field system and treated all other requisites of rural life as appendant to it."[21] The only question is as to the extent to which within this community private property was developed or eminent control maintained. In any case it is probable that land was originally held for use, and that its value to its separate owner was conditioned by the right which it carried to that part of the area which was undeniably common. But we have seen that from the first this

[19] Or there may be a subject tribe who are hewers of wood and drawers of water. Cf. Nieboer, *Slavery as an Industrial System*, who finds ten clear cases of the presence and twelve of the absence of slavery among pastoral folk (p. 262 ff.).

[20] See Tawney, *Agrarian Problems in the Sixteenth Century*; and Hammond, *The Village Labourer*.

[21] Vinogradoff, *Growth of the Manor*, p. 365.

system was compatible with inequality, and we have noted several methods by which the inequality might develop. In our own country in the early Middle Ages the growth of the king's power, and then the grant of judicial privileges and correlative fiscal duties to private people, together with corresponding grants to the Church, were continuously at work to convert the village into the manor.[22] Now in the manor the cultivators had certainly to work for the lord as well as for themselves. The lord's property is held "for power," or perhaps more strictly it is the economic appanage of the legal power which he holds over the inhabitants—it is power held for property. At the same time one good feature of the older system survives. The ordinary child is still born into a system in which the basis of his work and his livelihood is assured to him. He has his virgate or half virgate. At worst—if not a slave[23]—he is a cottar with a few acres and the right by practice, if not by stringent custom, to the pasture and the waste. Unfortunately these rights were insecure, and when the strain came, when it became profitable to lay down pasture, to enclose the demesne, and to encroach on the waste, there was no one but the freeholder who was in a firm position for resistance.[24] In the break-up of the manorial system the serf gained his freedom, but he lost his land. The outline of the story has now been pretty clearly made out, but is too long and complex even for summary here.[25] With the upshot we are familiar—on the one hand private ownership denuded of the old public obli-

[22] Cf. Maitland, *Domesday Book and Beyond.*

[23] Chattel slavery disappeared in England during the twelfth century.

[24] On the position of the copyholders and the customary tenants, see Tawney.

[25] See the works already cited of Mr. Tawney and Mr. and Mrs. Hammond; also *The English Peasantry and the Enclosures,* by Gilbert Slater.

gations; on the other, a landless proletariate whose chief economic privilege is that its members are free to leave their homes and do better elsewhere; and between them the farmer owning his stock but renting his land.

The appearance of the capitalist farmer is, however, only a minor symptom of a vast change in the nature of property which has developed *pari passu* with the private ownership of land on the large scale. In early society we could virtually treat land as the one necessary basis of subsistence; and the fact that land could not be accumulated in private hands apart from personal occupation was noted as a preservative of the common life. In the pastoral stage, however, we saw accummulation of a different kind, and the growth of flocks and herds, the first form of true capital, at once involved the distinction between the possessing and non-possessing classes. The development of industry and commerce has always engendered the same distinction, and has set a problem to legislators whether in Athens or in Rome or in our own time. But as industry is more productive, so accumulation proceeds on a vastly greater scale in our own civilization; and while the borders of political, religious, national, and one may say social, freedom have widened, the inequalities of wealth have only increased. Yet it is not inequality as such that is the fundamental fact of our system. It is the entire dependence of the masses on land and capital which belong to others. Five out of six, I suppose, of the children now born, are born to no assured place in the industrial system. They have of their own no means of subsistence. They have hands and brains, but they have neither land to till nor stock to till it with. What is more, only a fraction of our population could be supported by agriculture; and

for the cotton spinner, the railway man, or the coal miner, there is no sense in talking of his owning the means of production as an individual. The rise of large-scale industry has abolished the possibility of any form of individualism as a general solution of the economic problem.

Thus, while modern economic conditions have virtually abolished property *for use*—apart from furniture, clothing, etc.; that is, property in the means of production, for the great majority of the people—they have brought about the accumulation of vast masses of property *for power* in the hands of a relatively narrow class. The contrast is accentuated by the increasing divorce between power and use. The large landowner stood in some direct governing relation to his estate. Responsibility went with ownership, and even survived the explicit association between land tenure and political functions. The capitalist employer, who began to be differentiated from the workman in the earlier part of the modern period, and who was the prominent feature of the first two generations of the industrial revolution, was still, as the name implies, the employer as well as the capitalist. He himself, that is to say, was actively engaged in carrying out the function which his property made possible. But with the progress of accumulation there came further differentiations. It became more and more indisputable that the possession of capital was one thing and the conduct of business another; and with the rise of the joint-stock system capital became so split up into shares and stocks that it has come to be for its owners nothing more than a paper certificate, or an entry in the books of the Bank of England, which they have never seen, meaning to them only what it brings in by the quarter or the half year. And yet these investments, this capital, is the

governing force in the lives of thousands and millions of men scattered throughout the world. It is the instrument by which they are set in motion, by which their labour is sustained, above all, by which it is directed and controlled. The divorce of functions is complete; and what wonder if the owner of capital presents himself to the imagination of the workman merely as an abstract, distant, unknown suction-pump, that is drawing away such and such a percentage of the fruits of industry without making a motion to help in the work?

Lastly, behind the mass of the investors, is the financier who shuffles all these abstract pieces of capital about, controls their application, takes his commission on the proceeds, and constitutes himself the working centre of industry and commerce. The institution of property has, in its modern form, reached its zenith as a means of giving to the few power over the life of the many, and its nadir as a means of securing to the many the basis of regular industry, purposeful occupation, freedom, and self-support.

5. Some Theories of Property

With these few illustrations of the diversity of forms which the institution of property has assumed in the course of social evolution, we may usefully compare some distinctive theories which have been held by thinkers of its basis and functions. We may consider first those who have attacked the institution of private property altogether, in the interests of communism; secondly, those who have found a general justification for the institution of private property either in its economic or in its ethical value; and thirdly, those who have held that the solution lies in the discrimination of kinds of property and the function which each severally performs.

(*a*) Property has sometimes been attacked on philosophical, sometimes on religious grounds. In the *Republic,* the object of Plato is to set out in clearest possible outline the picture of a completely unified State. The State is to be so compact a unity that, if one of its members suffers, it is to feel that it suffers in that member, just as when the finger aches the man feels the ache in the finger. Looking over the rallying points at which the individual can assert himself against the social unity, Plato finds them conspicuously in family life on the one hand and in property on the other, and he succeeds to the abolition of both; at any rate, the guardians, who are to lead the highest, the most completely social, and the most fully philosophic life, can have no room in their minds either for family or for economic cares. Communism is advocated in the interests, not of enjoyment but of austerity; and in this the Platonic philosophers may be regarded as prototypes of the monastic community. In both cases it is open to criticism to maintain that social unity is pushed to a point at which personality is obliterated, and that the independence of material things is expressed in a form in which it defeats itself. Man cannot live without material things, and in so far as he is dependent for his necessaries on the will of others, his life is also dependent upon these others. Where he cannot move hand or foot without them, he abandons self-direction, and the self-denial, which was to give spiritual freedom, ends by denying autonomy altogether.

But the principle of property was also criticized in antiquity from the point of view of Natural Law. Property, it was clear to the thinkers who introduced this conception into ethics, was a human institution. The gifts of nature, the land and its fruits, must originally be free to all men; appropriation was the act of

man, and the institutions by which appropriation is regulated derived from man-made laws. Just as by nature all men are free and equal, so by nature they have a right to use the earth and its fruits for their own purposes, to apply their labour to them freely, and to enjoy the product at their will.

This conception of a natural Communism underlying the institutions of positive law was taken up by the Early Church, where it fused with the conception of a Christian Communism, based, not on the Platonic principle of an abstract unity, but on the ideal of brotherly love and mutual aid as between co-religionists, the sons of one Father, the members of one household. This was an ideal which could only be effective among the members of a small community; and when the Church had seriously to undertake the problem of reconciling State law with Christian ethics, it had to fall back on the Stoic distinction between the law of nature and the positive institutions of government. The fabric of society was accepted, and though Communism is proclaimed as the law of nature at the outset of the Canon law, it is not so interpreted as to direct or to qualify those institutions of State which determine the conditions on which property is held, and by which wealth is distributed, excepting in so far as it secures the levy of a tax on wealth for the service of the Church and of the poor. The theory of Communism, as qualified by respect for established institutions, becomes a doctrine of charity.

In point of fact, as a political doctrine, Communism is an emotion rather than a system. In a small community it has its place. Every family, while the members live together, is in essence a communistic unit; and Communism may be conceived as operating successfully among any small group of enthusiasts as long

as the enthusiasm is maintained. In the larger world the communal principle has its place only in respect of the enjoyment of those things in which no correlative performance of duty is requisite. Public spaces, recreation grounds, the advantages of lighting, and, in some respects, of cleaning, sanitation, order and good government, are common property in the strict sense of the term. Everybody can enjoy them without payment, for some of them are things which cannot exist at all unless they are available for every one, and others cost no more when available to all than they would if restricted to a few. But Communism of this kind only touches the outside of life.

(*b*) For the regular working of the economic order it has been clear to most thinkers that there must be some systematic apportionment of the instruments of production, and the fruits of industry. The social organism has many functions, and each function requires its due stimulus and sustenance; hence the most popular theory of property associates it with the right to labour and the product of labour. On this basis Locke finds a justification for property antecedent to positive law. By the law of nature the earth stood open to all men, but also by the law of nature a man had the right of property in his own person, and in that which he wrought with his hands. Accordingly, that in which he "mixed his labour" became his own, and this would include the portion of soil which he reclaimed by occupation and tillage. But in this conception, as Locke apparently recognizes, property is limited by use: "As much as any one can make use of to any advantage of life until it spoils, so much he may by his labour fix, and property in whatever is beyond this is more than his share, and belongs to others." Hence Locke protests that his theory is incompatible with "engross-

ing." Unfortunately he only works it out for "Americans," as typical instances of people who live under conditions where land is still superabundant. And when he comes to consider property as an established institution of organized society, he can only tell us what is painfully obvious, that "it is plain that the consent of men have agreed to a disproportionate and unequal possession of the earth—I mean out of the bounds of society and compact, for in governments the laws regulate it, they having by consent found out and agreed in a way how a man may rightfully, and without injury, possess more than he himself can make use of, by receiving gold and silver."[26]

Locke, it is true, states in general terms that laws and government ought to accommodate themselves to the principles of natural law; and if we press this principle in the case of property, it seems clear that Locke might be led, if he were living now, to somewhat radical conclusions. Be this as it may, we find in Locke the basis of a view which is at once a justification of property, and a criticism of industrial organization. Man has a right, it would seem, first to the opportunity of labour; secondly, to the fruits of his labour; thirdly, to what he can use of these fruits, and nothing more. Property so conceived is what we have here called property for use. The conception is individualistic, but it may be given a more social turn if we bear in mind, first of all, that society as a collective whole is that which determines the structure and working of economic institutions; and secondly, that in a society where men produce for exchange, labour is a social function, and the price of labour its reward. Locke's doctrine would then amount to this, that the social right of each man is to a place in the economic order, in

[26] *Second Treatise on Civil Government*, chap. v.

which he both has opportunity for exercising his faculties in the social service, and can reap thereby a reward proportionate to the value of the service rendered to society.[27]

(*c*) But there exists a much more radical Individualism than Locke's, which also ascends to antiquity. The Aristotelian criticism of Plato proceeds partly from the just conception that unity is only one feature of social life, and that the true community must be a whole of many diverse parts. It rests also upon the conception that property is among the external good things which are necessary to the full expression of personality. In emphasizing this side of the matter[28] it may be allowed that Aristotle lets the communal principle evaporate into a mere pious aspiration. Private possession and common use is a pleasant phrase, but, we may safely maintain, remains a mere phrase. It is no organic law for society to lay down, that men should use their possessions in the spirit of the proverb that "the things of friends are common."

The centre of this line of thought is the conception that property is an instrument of personality, and in that form it has been revived and has played an important part in modern thought. In general terms, what has been said at the outset will have justified this principle by anticipation. Material things that a man can count upon as his own, that he can leave and return to, that he can use at his will, are, we have admitted, the basis of a purposeful life, and therefore of a rational and harmonious development of personality. But as a basis of the institution of property this principle

[27] For some further account of Locke's doctrine and criticism of it see Essay II., in which also will be found a fuller account of Aristotle's theory of property than is needful for the purpose of the next paragraph.

[28] *Ibid.*

carries with it consequences which seem too often to be overlooked. On the one hand it carries the condemnation of a social system in which property of the kind and amount required for such development of personality is not generally accessible to all citizens, who do not forfeit their right by misfeasance. A society which should accept this principle, could not tolerate anything like the existing distribution of wealth, could not permit those methods of accumulation which concentrate wealth in the hands of the few, and leave the many—so far as the practical object of earning their living is concerned—as naked as they were born. Cherished as a Conservative principle, it has in it the seed of Radical revolution. And secondly, if this principle would require the universal distribution of the means of subsistence, it would also limit the accumulation of property by the measure of that which is healthy for the soul. The possession of property which emancipates from toil, the possession of property which makes, not for the guidance of self, but for the control of others, stands on this principle condemned; and what is a justification of property becomes a reprobation of riches. Ethical individualism in property, carried through, blows up its own citadel.

(*d*) There remains the Socialistic conception of property, the term by which in general we may express any theory which distinguishes between the appropriation of the means of production and the appropriation of the fruits of labour. The difficulty of this theory, considered merely as a theory—for we are not here concerned with practical applications—is, in the first place, to discriminate neatly between the two kinds of property; and in the second place, to determine the conditions of access for the individual to the means of production, and the ethical basis and measure of his

reward. But at the outset let us be clear as to the distinction between the Socialistic principle and the Communist. To the Communist all things are equally the objects of enjoyment, without payment made or service rendered. To the Socialist—or indeed to any society so far as the socialistic principle is applied—property is not common to all, but is held in common for all, and its assignment or apportionment is a matter of collective regulation. There is no enjoyment without a correlative performance of function. The problem before the Socialist has always been to consider how this collective regulation can be accommodated to the free initiative and enterprise of the individual; and it may be doubted whether, upon purely socialistic principles, this problem is capable of solution.

The problem is complicated by the psychological difficulties of democratic organization. We talk easily of a common property, of a common industry directed to the common good and organized by the general will; but where is the general will? Is it a figment of the rhetoricians, or is it a working reality in actual life? In practice, does it mean a collective decision, to which the ordinary man contributes, and in which therefore his personality may, in a genuine sense, be said to be expressed? Or does it mean the fiat of statesmen and of experts, sheepishly accepted by the crowd because they see no way of escaping it? On the former alternative, collective property might truly be regarded as having that same organic relation to personality as is possessed by the peasant's plot of ground in relation to the proprietor, who knows the capacity of every square yard of it. In the latter alternative, collective industry becomes a mechanism, in which each man might be reduced to the part of an unthinking cog, grinding his grind with no more freedom than the

factory hand under the capitalist employer, and with no more sense of the social value of his work than the machine-minder performing a fragmentary process in the manufacture of an article, which, whether sound or unsound, wholesome or unwholesome, will go to the use or the annoyance or the injury of people whom he has never seen and never will see. Considerations such as these have led some of the more generous minds of our own time to look for the reform of property rather in a revived individualism than in furthering the collectivist tendencies, which, of late years, have influenced legislation. Their ideal would be something like the mediaeval organization, without its restrictions on personal freedom. They sigh for the day of the small landed proprietor and the master-workman.

In relation to the land this conception, no doubt, has a certain limited applicability; but in the main its development seems barred by the hard facts of economic development, making for the large scale of production and the complex interchange of goods throughout the world market. Yet the principle is in so far just that it recognizes an indestructible core of value in the idea of property. Only it has to be maintained that, if private property is of value, for reasons and within limits that have been indicated, to the fulfilment of personality, common property is equally of value for the expression and the development of social life. The problem of modern economic reorganization would seem to be to find a method, compatible with the industrial conditions of the new age, of securing to each man, as a part of his civic birthright, a place in the industrial system and a lien upon the common product that he may call his own, without dependence either

upon private charity or the arbitrary decision of an official.

The other side of this problem is that of securing for the State the ultimate ownership of the natural sources of wealth and of the accumulation of past generations, together with the supreme control of the direction of industrial activity and of labour contracts. We cannot reconstitute the early commune. We cannot secure for each man his inheritance, his virgate, and his plough team. What we have to aim at would seem to be an analogous relation between the individual and the community, adapted to the complexity of modern conditions, combining the security of the old régime with the flexibility and freedom of the new, partly by education and training, partly by the supervision of industrial organization. We have to restore the contact between the individual and the instruments of labour. We have to assure him of continuity in employment, and—given reasonable industry and thrift—of provision against the accidents of life and the periods of helplessness. And for these purposes we have to restore to society a direct ownership of some things, but an eminent ownership of all things material to the production of wealth, securing "property for use" to the individual, and retaining "property for power" for the democratic state.

II

THE PHILOSOPHICAL THEORY OF PROPERTY

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SUMMARY

THE Platonic Utopia has little bearing on modern controversies. Aristotle understood the advantages of private property, but was not an extreme Individualist. Defects of his treatment due to (*a*) his not appreciating the functions of Capital, (*b*) not seeing that his condemnation of Usury would apply to the land-owner. His argument (against Plato) for private property contains in germ the best that has ever been said on the subject. But his views presuppose an aristocratic class-morality.

Stoicism and Christianity both contributed to a more universalistic and humanitarian morality. Views of the Fathers, Canonists, and Jurists. The legal idea that property can be acquired by *occupatio* passes into an ethical justification of property.

Locke's attempt to base property upon natural law by assuming that a man has a natural right to his own labour and to everything (including land) with which he mixes his labour. Difficulties and inconsistencies of the theory, which contradicts itself, since its application would violate the natural right of the landless man to his labour. This seen by Karl Marx and the *a priori* Socialists, who made the same principle the basis of extreme Socialism, *i.e.*, the principle that a man is entitled to the whole produce of his labour. The theory cannot be applied in practice.

Impossible to settle the question by any *a priori* theory. Duties and rights cannot be ascertained without an appeal to social consequences. This recognized by Hume and Utilitarians.

Many later thinkers would accept the view that property can only be justified by its tendency to promote the public good without admitting that "good" means only pleasure.

Locke's principle on the whole followed by Kant.

Kant's influence produced a tendency in Idealists generally to treat the rights of property as natural rights, *e.g.* in Hegel; but Hegel's influence valuable (*a*) in promoting a more spiritual view of the State and its functions, (*b*) in emphasising the influence of property upon character—its necessity as an expression of personality.

The extreme Individualism of Herbert Spencer based on same principle as Locke's, aided by a misapplication of the Darwinian doctrine of the "struggle for existence." He failed to see that private property implies as much State interference as Socialism.

The influence of Hegel on T. H. Green and other English Idealists.

The general tendency of modern political thought is to base the justification and the limitation of property-rights upon their social effects, including moral effects.

Bosanquet's insistence upon the necessity of private property for the development of character: a man's future must depend upon his own efforts and foresight.

Value of the principle admitted—as also the importance of liberty for social development, even if this liberty can only be fully enjoyed by the few.

Criticism of Professor Bosanquet: (*a*) he seems to forget that Socialism does not condemn private property but only private capital; (*b*) he too readily assumes that private property must always imply the present rights of inheritance and capitalisation; (*c*) while rightly insisting on the good effects of property upon character, he ignores the intense selfishness promoted by the present system of almost unlimited competition.

The problem of the future is gradually to modify the institution so as to secure its good effects, economic and moral, without its injustices and other bad effects. The whole question must be solved by an appeal to the social effects of different systems, not by any *a priori* principle.

II

THE PHILOSOPHICAL THEORY OF PROPERTY

A Historical Survey and Criticism

It will be impossible in a short article to dwell on the earlier history of speculation on this subject. Plato's drastic treatment of the institution must be passed over altogether; and after all, the Platonic Utopia has little bearing on modern controversies, for it was apparently only for a particular class that his Communism was designed. It would be more to the point to dwell upon the theories of Aristotle; for there is much in his treatment of the subject which is of the highest significance for the modern world. Nobody understood better the advantages of private property as an institution; and yet he was far indeed from the position of modern Individualists. His fundamental thought was that property was an instrument of life —of the highest life; and he recognized that not an unlimited but a limited amount of property was necessary for such a life. For him the ideal arrangement was that half the land of the state should be held in common and only half held by private owners, and he thought it desirable that in the original distribution of wealth extreme inequalities should be avoided; but he was far too keenly alive to the dangers of Revolution (στασις)—that ever-present peril in the ancient City-state—to favour a compulsory expropriation of

existing owners. His objection to lending money upon interest does perhaps imply some suspicion of the moral difficulties connected with it: but he had no conception at all of the true functions of capital, and so fell into the economic fallacy so familiar to us from the speech of Antonio in the *Merchant of Venice,* that usury is wrong because "barren metal" does not breed. It never occurred to him that, though money does not breed, it will buy a cow which does breed. If A borrowed from B £20 for a year, and bought therewith a cow, and then proposed to hand B back the cow (or the £20 which it cost) and keep the calf, the absurdity would be evident. Nor did he recognize that, if all lending upon interest is to be condemned, the condemnation would fall as much upon the aristocratic landowning citizen—the type with him of all that was excellent and respectable—as well as upon the despised alien money-lender. In fact Aristotle was far too much imbued with the prejudices of the aristocratic class to be capable of discussing the subject in any fundamental manner. The ethical question as to the justification of private property and private capital (he, of course, does not distinguish between them) is never fairly raised. So far as the problem is raised and answered, the answer amounts to this: That material wealth is necessary as a condition of the higher life; and that some measure of private property is more conducive to the higher life than any form of common ownership, because (1) it tends more to real unity of sentiment (the *raison d'être* of the Platonic Utopia) than Communism; (2) it is economically superior to it, for people bestow more attention upon the management of private than of public property; (3) ownership is a source of pleasure; and (4) it is more conducive to the growth of character, for Communism destroys the pos-

sibility of exercising two important virtues, self-control and liberality.[1] It is not too much to say that we have here an outline of the best that has ever been said in defence of private property; but the difficulties of the subject are not appreciated. Aristotle's intensely aristocratic moral theory, according to which virtue was only possible to gentlemen of education and "private means," while the slave and even the free artisan (if he was not a citizen) were mere means to virtue or noble life in another, prevented his arriving at any fully thought out theory which could be acceptable to those who have rejected his narrow civic and class morality.

Both Stoicism and Christianity contributed to the establishment of a more universalistic and more humanitarian ideal of life. And there is much in the teaching of the Christian Fathers, as well as of the Stoic Philosophers and of the great Roman Jurists (the earlier of whom were powerfully affected by Stoic ideas, and the later also by Christianity), which would be well worth examining if space allowed (see below, Essays IV.-V.). Within our limits it is only possible to remark that the Christian teachers were for the most part occupied merely with the question of private ethics, not of State regulation: in so far therefore as they felt scruples about the justification of large private wealth, the moral drawn was simply an inculcation of almsgiving. So far as there is any definite ethical theory of property, the general tendency is to admit that originally, and therefore "naturally," all things were common, but that private property is necessitated by that corruption of human nature which was brought about by the Fall. Still, in so far as the actual state of human nature required such a private

[1] Aristotle, *Politics*, ii. pp. 1261 b-1263 b.

appropriation of goods, this very necessity constitutes a certain justification for it. So far the tendency was to treat the laws of property as a branch of positive law, and to find the justification for them in the same considerations which justified the State in general.[2] During the Middle Ages the question of the right and justification of the State's authority was a matter of lively controversy. The *Decretum* of Gratian—the famous text-book of Canon Law which appeared about 1142—finds the origin and justification of the State in a supposed original contract; and though it had to contend with other theories, the tendency during the latter portion of this period was towards a general acceptance of the theory which found the justification of the State in a contract or agreement, the duty to observe which belonged to natural law and was itself independent of State enactment. It was implied in this theory that all property rights must be derived from the authority of the State, and must therefore be liable in the last resort to be overruled for the public good by that authority. At the same time the absoluteness of the power which this view seemed to give to the State—that is, practically in most cases to a monarch who was becoming more and more despotic—made the defenders of law and public right unwilling to acquiesce in a view which placed all property at the mercy of the ruler, and anxious to find a basis for their rights in the requirements of natural law. This was

[2] For further information as to patristic and mediaeval views about property, see Essay V.; also Carlyle, *History of Mediaeval Political Theory in the West*, I. chap. xii., II. chap. ii., etc.; Gierke, *Political Theories of the Middle Age*, ed. Maitland, pp. 78 *sq.*, 178 *sq. et passim.* It must be remembered that the ancient and mediaeval thinkers were largely prevented from taking a strong view of the naturalness or sacredness of property by the fact that for them property included slaves. The tendency was therefore to rest its justification solely upon the authority of the State.

done by what we may call an ethical application of the purely legal theories about *occupatio*. The Jurist as such was not concerned with the strictly ethical question, but he was concerned with the question how and when private property was to be recognized, how it was to be distinguished from that which was not property at all or which was in some sense common property—in fact what constituted a valid title to property: and this question was one which to some extent involved the historical question as to the origin of private property. Now it was a simple matter of historical fact that one at least of the ways in which private property began was by some person or persons "occupying" or appropriating to his or their own use something which previously was unappropriated (*res nullius*); and the Roman Law recognizes such *occupatio* as a valid title to property. So far the theory was merely legal and historical; but it was an easy step to find in this historical fact an ethical justification of the institution. This *occupatio* was morally justified by the theory that the appropriation involved labour, and that this labour gave the appropriating individual a right to the fruits of his labour, in accordance with the provisions of natural law. That a man who takes the trouble to cut down a tree in a wild and unappropriated forest and make a canoe of it should be allowed to keep the canoe and reserve it for his exclusive use, is indeed so natural and convenient an arrangement that it has been recognized by most primitive peoples and savage tribes. This recognition is not, we are told, universal; in some primitive communities the tribal instinct is so strong, and the recognition of the individual's claims so weak, that there would not be the smallest notion that the making of a canoe gave a man any title to prevent his fellow tribesmen using

it on the following morning. Still, on the whole, private ownership in things actually and obviously created by labour is a fairly primitive and fairly universal human institution. And it was natural enough to extend the same mode of thinking to the case of cultivated land, though the more careful study of primitive history has taught us that as a rule the first appropriation and cultivation of land was the work of groups rather than of individuals. It was tempting to the philosopher in search of a theoretical justification of property to accept this natural instinct of appropriation, and the legal notions which had grown out of it, as an ultimate solution of his difficulties and not to go behind it. Sometimes the justification was eked out either by utilitarian considerations or by the theory of a general consent, given either directly to the principle that occupation or labour constitutes ownership, or indirectly as a corollary of the general agreement that the State which has sanctioned this arrangement is to be obeyed.

I shall not attempt to follow the growth of these ideas through the Fathers, the Jurists, the Canonists, the Schoolmen, the modern juristic thinkers like Grotius, or the earlier modern Philosophers. The subject is not prominent in the earliest modern Philosophers, except quite incidentally as a department of Ethics. Speaking very broadly, the general tendency was to defend the institution of private property and the prohibition of theft on utilitarian grounds, as conducive to the good of human society, whether that good was made to consist in mere pleasure (as with Hobbes) or in some higher kind of Well-being. I will pass immediately to the writings of Locke, whose version of the theory already touched upon—the natural right of the fruits of one's labour—has become the basis of almost all the attempts of modern philosophers to base the

justification of private property upon some *a priori* principle, and not upon the ground of general utility and convenience.

Strictly speaking, Locke was himself a pure Utilitarian. In his *Essay* he strenuously denies the existence of any "innate practical principles," and occasionally in his *Treatise of Civil Government* he attempts to defend the doctrine that labour confers ownership on utilitarian grounds—as a means to the general good; but in general, when dealing with this subject—as indeed in his political speculation generally—he entirely forgets his utilitarian principles, and treats the theory as if it were indeed an "innate practical principle." The explanation of this curious lapse is to be found in the circumstances of his time. There was a general agreement among the thinkers too enlightened to accept the High Anglican divine right of Kings, that the authority of Government must be found in a supposed original contract. Primitive men had elected a Sovereign and agreed to obey him, and there is a tacit agreement of living men to go on obeying the State. The chief subject of dispute was as to the limits of the authority thus conferred. Hobbes, as a champion of Absolutism in the State—that is to say, as regards England, of absolute Monarchy—treated that authority as practically unlimited.[3] Locke as a Whig was interested in setting limits to it. In particular he endeavoured to turn the familiar Whig doctrine "No taxation without representation" from an accepted maxim of the English constitution, or a convenient understanding for any developed political community, into an absolute ethical principle. He admitted that Mon-

[3] See the early chapters of his *Leviathan*. The theory had been already adopted by Hooker in the first chapter of his *Ecclesiastical Polity*.

archy might be a lawful form of government when established by general agreement. In such a government a King might make laws and issue orders, and it was the duty of the subject to obey them, but there was one thing which the most absolute monarch in the world could not lawfully do: he could not take a sixpence out of his subject's pockets without his express consent given personally or by representation. The King could make laws under which the subject could be shot; he could enter upon a war and compel him to fight in it and be shot by the enemy; he could interfere with his liberty and convenience in a thousand ways without any consent except the assumed consent to enter into political society; but no original consent or consideration of social advantage, however pressing, could overcome the inherent sacredness of the breeches pocket. To maintain this theory it was necessary to represent that the institution of private property did not depend simply upon any laws made by the Sovereign, but was part of the law of nature, and as such existed already in the supposed state of nature prior to the institution of civil society. It rested upon the law of nature.

Hobbes had represented the state of nature as one in which there was absolutely no law and no morality, no duties and no rights. Every man could do what he liked and take what he liked—checked only by the equally comprehensive right of every one else to do the same. Only when men had entered into a contract to obey a common superior did any rights or obligations arise. Not so with Locke. According to him individuals in a state of nature had certain rights and certain corresponding duties, discernible by the light of nature and prescribed by its laws. Among these "laws of nature," or self-evident moral principles,

was this: that every man has a right to his own person, to his own labour, and to that with which he mixes his labour.

"Though the earth, and all inferiour creatures, be common to all men, yet every man has a property in his own person: this nobody has any right to but himself. The labour of his body, and the work of his hands, we may say, are properly his. Whatsoever then he removes out of the state that nature hath provided, and left it in, he hath mixed his labour with, and joined to it something that is his own, and thereby makes it his property. It being by him removed from the common state nature hath placed it in, hath by this labour something annexed to it, that excludes the common right of other men. For this labour being the unquestionable property of the labourer, no man but he can have a right to what that is once joined to, at least where there is enough, and as good, left in common for others.

"He that is nourished by the acorns he picked up under a oak, or the apples he gathered from the trees in the wood, has certainly appropriated them to himself. Nobody can deny but the nourishment is his. I ask then, when did they begin to be his? when he digested? or when he eat? or when he boiled? or when he brought them home? or when he picked them up? and it is plain, if the first gathering made them not his, nothing else could. That labour put a distinction between them and common; that added something to them more than nature, the common mother of all, had done; and so they became his private right. And will any one say he had no right to those acorns or apples he thus appropriated, because he had not the consent of all mankind to make them his? was it a robbery thus to assume to himself what belonged to all in common? If such a consent as that was necessary, man had starved, notwithstanding the plenty God had given him."[4]

Private property in land can be acquired in the same way—by mixing one's labour with it—though in a state of nature these rights are qualified by certain important reservations. In the first place, a man may

[4] *Treatise of Civil Government*, chap. v. §§ 27, 28.

only appropriate as much wealth as he can use. "The same law of nature that does by this means give us property, does also bound that property too. 'God has given us all things richly' (1 Tim. vi. 12). Is the voice of reason confirmed by inspiration? But how has He given it us? 'To enjoy.' As much as any one can make use of to any advantage of life before it spoils, so much he may by his labour fix a property in. Whatever is beyond this is more than his share, and belongs to others."[5] Thus if a man plucks apples and heaps them up beneath the tree, his labour in plucking them gives him a right to appropriate them. The next wayfarer coming along must starve rather than touch them; but if the plucker lets any of the apples perish uneaten, he is a thief. This restriction is meant no doubt to apply to the case of land as of other property. But in the case of land in particular a very significant restriction is (as we have seen) introduced, though in a hesitating manner—"at least where there is as much and as good left for others." Private property in land may have been justified on these principles "in the beginning" or when "all the world was America"; but it is difficult to see how he could have thought that it justified private property as it existed in England at the end of the seventeenth century.

What shall we say to this theory? Is it self-evident that a man has a right to all that his labour produces? Rights are meaningless except as the converse of duties. To say that a man has a right to all that his labour produces, means that other people are under a moral obligation to let him enjoy all that his labour produces. Is it self-evident that they ought to do this, even if the consequences to Society should be disastrous? Was a party of primitive men—if we presup-

[5] *Ibid.* § 31.

pose Locke's unhistorical conception of primitive life —wandering over an unappropriated prairie, morally bound to allow an individual who had got a few miles beyond them to appropriate all the available apples or acorns or dates? Ought they to starve rather than interfere with his hoard, until it was proved by experience that he had appropriated more than he could consume? And then, if we concede the right to what the labour produces, what about the material with which he chooses to "mix his labour"? Labour produces nothing without some material, which is always in the last resort some part of the soil or of the things that grow out of it. May a man mix ever so little labour with ever so much raw material, and yet secure a right over that material for himself and his heirs for all time? May he by merely constructing a ring-fence round some thousand acres of the best soil, or perhaps lightly scratching its surface with a plough, secure that property to himself, his heirs, and assigns for ever? If we concede that his labour gives him the property in it for his lifetime, what about his heirs who have not laboured upon it? Is there any self-evident principle which determines what is to become of it after his death? Locke assumes that the English liberty of bequest (not altogether unlimited in Locke's time) was the "natural" arrangement. Yet a will of lands was only made possible by a statute of Henry VIII.; and in case of intestacy three separate systems of distribution prevailed (and still prevail) even within the limits of England. In the greater part of the country the whole of the real estate goes to the eldest son; in certain parts of the county of Kent it is equally divided in accordance with the custom of Gavelkind; while in other parts of the country it all goes to the youngest son, in accordance with the custom of Bor-

ough English. Are all these arrangements in accordance with the law of nature? Locke would probably have urged that these were modifications of the law of nature introduced by the State-made or civil law, which derived its authority from the social contract. But it is not apparent how the contract, the obligation to keep which itself rests upon a principle of natural law, can override other laws of nature which are (according to Locke) as sacred and absolute as the law that contracts shall be kept. And after all the law of nature only conferred a limited right of property. What has become of the limitations which restricted property to as much as a man could use and no more, and qualified even this principle as regards land by the "at least when there is as much and as good left for others"?

The best way of criticizing Locke's theory is to show that, when thought out, it contradicts itself. Let us suppose that ten men appropriate a desert island, divide it among themselves, and cultivate their respective shares. Each of them has ten sons, and having a taste for "founding a family" leaves his share to the eldest. In the next generation there will be ten landlords and ninety landless men. These men have a sacred, natural right to the fruits of their labour: but how are they to exercise it? They will say to the elder brothers: "We have a right to labour: let us work on your lands." "By all means," the elder brothers will say, "on condition of paying over to us all that the land produces over and above what will keep you and your families." In that way the principle contradicts itself. The rights of property, supposed to be derived from a man's natural right to the fruits of his labour, involves the negation of that right in the non-inheritors of property. This is exactly

what Karl Marx and the *a priori* Socialists saw. They accepted Locke's own principle, and expressed it in the only logical form—"the labourer has a right to *the whole* produce of his labour." But this right is defeated by any private appropriation of land and capital; therefore all land and capital, all the "instruments of production," must be held in common. Thus the same principle which was intended by Locke as the basis of a system of extreme Individualism, has become the corner-stone of a system of extreme and thorough-going Socialism. Upon the premises it cannot be denied that the socialistic application is the more logical. And yet in one way the socialistic application is open to the same fundamental objection as Locke's. It might possibly be applied to a very primitive society in which each individual, or rather each family, produced by their own unassisted efforts everything that they wanted. But in a piece of cloth woven in a modern factory, who shall say how much of the finished product was really due to the weaver, how much to his assistant, how much to the shepherd who tended the sheep, how much to the merchant who brought it to market? And then the soldier, the magistrate, the policeman, the schoolmaster, the builder, who all indirectly took part in its production, will reasonably contend that they too assisted to make that piece of cloth, and will demand their shares. But the maxim gives us no guidance as to the principle upon which the resulting wealth is to be divided between all these classes of labourers without all sorts of supplementary principles, about the justice or reasonableness of which endless disputes arise. And then after all, as Locke saw, the appropriation of Capital by the State only settles difficulties of distribution so long as "there is as much and as good left for others." The

Karl Marx theory may justify the appropriation of land as between the members of a particular section *inter se*; but it assumes the appropriation of the whole country by a particular community, and this cannot be justified as against the inhabitants of less favoured regions, if labour alone can confer a title to the enjoyment of wealth. Nobody has created the soil with which the man has mixed his labour. The fundamental question which Locke's theory raises is, whether any principle for the regulation of property or the enjoyment of wealth can claim to be self-evident apart from all considerations of social effects.

It cannot be too strongly insisted that the question of property is only a particular department of the more general question, whether there are any *a priori* self-evident rights; and that in turn depends upon the question whether there are any duties which can be laid down *a priori*, and without reference to the social effects of conduct. Rights are meaningless apart from duties; if all duties spring in the last resort from the duty of promoting the general good, then rights must also be shown to spring from the same principle. This was seen by Hume, who is generally regarded as the founder of modern Utilitarianism, the system according to which all duty consists in promoting the general good—interpreted to mean nothing but happiness in the sense of pleasure. The system was really much older than Hume. But Hume did much more than his predecessors in attempting to apply the principle to the details of duty; and he made a much more systematic attempt than they to meet some of its obvious difficulties. One of the most conspicuous of these was connected with the question of property. If an act is always right which produces a maximum of happiness, how could any act be more justifiable than to pick the

pocket of a Duke, who would not feel the loss, and to give the proceeds to a beggar to whom it would give much pleasure? Hume met this difficulty by the great utilitarian principle of the general rule or the long-run. Many isolated acts might produce happiness, which would be socially disastrous if generally imitated.

To make this (the principle that the idea Justice is based upon Utility in an indirect and artificial way) more evident consider, that tho' the rules of justice are establish'd merely by interest, their connexion with interest is somewhat singular, and is different from what may be observ'd on other occasions. A single act of justice is frequently contrary to *public interest*; and were it to stand alone, without being follow'd by other acts, may, in itself, be very prejudicial to society. When a man of merit, of a beneficent disposition, restores a great fortune to a miser, or a seditious bigot, he has acted justly and laudably, but the public is a real sufferer. Nor is every single act of justice, consider'd apart, more conducive to private interest than to public; and 'tis easily conceiv'd how a man may impoverish himself by a signal instance of integrity, and have reason to wish, that with regard to that single act, the laws of justice were for a moment suspended in the universe. But however single acts of justice may be contrary, either to public or private interest, 'tis certain, that the whole plan or scheme is highly conducive, or indeed absolutely requisite, both to the support of society, and the well-being of every individual. 'Tis impossible to separate the good from the ill. Property must be stable, and must be fix'd by general rules. Tho' in one instance the public be a sufferer, this momentary ill is amply compensated by the steady prosecution of the rule, and by the power and order, which it establishes in society. And now every individual person must find himself a gainer, on balancing the account; since without justice society must immediately dissolve, and every one must fall into that savage and solitary condition, which is infinitely worse than the worst situation that can possibly be suppos'd in society.[6]

[6] *Treatise of Human Nature*, Pt. ii. § 2.

From Hume the Utilitarian principle passed to Jeremy Bentham and his followers, the first school who were actually called Utilitarians. Hume himself was a man of very conservative views, and little social or humanitarian enthusiasm. The application which he gave to his doctrine of property was eminently conservative; the rights, practically the unlimited rights, of property had no more ardent champion than this sceptical and very destructive thinker. Bentham was, of course, a zealous social reformer; and would heartily have favoured any attempt to modify the actual legal rights of property in any way which would tend to promote the public happiness. But the Benthamites were not Socialists. They were, most of them, ardent champions of a Psychology which regards the individual's love of his own pleasure as the supreme motive in human conduct, and of a Political Economy which was based upon that psychology, and which was consequently disposed to defend the system of private capital, with the inducements which it offers for individual exertion and accumulation, as absolutely essential to the public good. With the economic theory we are not now concerned. It is enough to point out that according to the Utilitarian school the rights of property spring ultimately from their tendency to promote the public good. This is a principle in which both the most ardent Individualist and the most extreme Socialist may agree. And there has been, on the whole, a general (though of course not by any means a universal) disposition ever since the time of Bentham to argue the question of property upon this basis—upon the question of its social effects. Karl Marx, indeed, based his Socialism upon an *a priori* principle; but of late the controversy between Socialism and its critics has generally been conducted on the assumption that

the Utilitarian criterion is to be accepted. The question has been simply which system has the greatest tendency to promote the public good. The principle of Utility is practically assumed in discussing questions of politics or public policy by many who would (however inconsistently) refuse to apply it to the details of private morals; and it has been even more universally accepted in popular controversy than among professed philosophers.

The most important qualification of the Utilitarian principle which has been introduced among philosophers is that most of them refuse to accept the view that the good is identical with pleasure. Many of those who would agree with Bentham in making the justification and the limitation of property-rights (as of all other principles of conduct) depend upon their tendency to promote the Well-being of human society, decline to follow him in thinking that Well-being means simply pleasure, and that pleasures differ only in quantity, not in quality. They will agree with Bentham as to the impossibility of pronouncing upon the morality of any human act apart from its consequences; they will differ from him as to the character of the consequences which have to be taken into consideration. They will admit that what appear at first sight self-evident moral rules are found on a little reflection to contradict themselves, to involve exceptions really based on considerations of social well-being, and to be really incapable of being laid down with any definiteness or precision without reference to such considerations. They will contend that we do not really understand what an act is until we understand its consequences, so far as these can be foreseen: and if consideration of consequences is once admitted, it is arbitrary to stop at any particular point. Ideally,

an act is right which tends to promote the largest possible amount of true human Well-being.[7] If so, the duties which the institution of property imposes must be defended on exactly the same principle—by their tendency ultimately (with immense stress on the *ultimately*) to promote this end. But it does not follow that true human Good or Well-being consists solely in a greatest quantum of pleasure. Many of those who would agree with Bentham in appealing to consequences, would insist strongly that morality or character or the good will is an end in itself and the most important element of Good; that intellectual and aesthetic activity are likewise valuable in themselves and not merely on account of the pleasure which they produce; and that, though pleasure is certainly an element in Well-being, its value depends upon its kind or quality and not merely upon quantity. Further to develop this view or the history of the controversies connected with it belongs to moral rather than to political philosophy. I can only point out that the question of property is part of a wider ethical problem; and that if we accept a consequential or "teleological" theory of Ethics, we are bound to make the justification of property depend upon the same principle. But I must now return for a moment to the *a priori* theories held by those who refuse to accept the teleological theory,[8] whether in its hedonistic or its unhedonistic form.

For the most part the modern attempts to place the

[7] I have developed the ethical theory here presupposed in my *Theory of Good and Evil*, and more briefly in a little volume on *Ethics* in "The People's Books" Series. This view may conveniently be styled "Ideal Utilitarianism."

[8] *I.e.*, a theory which finds the test of the morality of an act in the end which it promotes: the term "Utilitarianism," when used without explanation or qualification, is generally used to imply that this end is maximum pleasure.

rights of property upon an *a priori* basis have followed very much the lines laid down by Locke. Kant, who introduced such a "Copernican revolution" in Metaphysics, was the author of no new principle in politics. He accepted the social-contract view as to the origin and authority of the State in its crudest and most individualistic form, and he based property, like Locke, on what we may call the divine right of grab. The first occupier acquired thereby a sacred right to the ownership of it for all eternity. He introduced a qualification of the theory which brings out with peculiar distinctness its wholly unethical character. He held that a man has only a right to so much property as he can defend, and on this basis attempted to place on an *a priori* footing the convenient but arbitrary rule of international law which makes the dominion of States extend three miles into the sea, this being in Kant's time the maximum range of artillery.[9] What Natural Law will have to say when the guns on both sides of the English Channel can equally sweep the middle of the intervening waters is a problem which he has naturally not discussed. In Kant, however, the theory as to the way in which property could be acquired in a state of nature was seriously modified in its application to organized civil society. In civil society property can only be acquired by the implicit consent of Society, to which the State itself owes its authority. And the proper limits to the State's authority are fixed by the principle that the State's duty is to exercise the minimum of restraint under which the maximum liberty of each shall be compatible with the maximum liberty of every other. By a maximum of liberty he did not mean any of the subtler ethical ideas which have been read into the phrase by later Idealists

[9] Kant's *Philosophy of Law*, Eng. trans. by Hastie, pp. 82-92, etc.

who have used the same language, but simply freedom from constraint. It would be impossible further to develop Kant's view of property without discussing his whole conception of the nature of the State and of human society. It will be sufficient to say that the influence of Kant has produced a disposition among idealistic Philosophers to regard the rights of property as natural rights. We find in them a tendency to use the formulae of the old individualist theories, but to give them an attenuated or sublimated meaning.

Hegel, for instance,—the most influential of these writers,—tells us that "a person has the right to direct his will upon any object, as his real and positive end. The object thus becomes his. As it [the object] has no end in itself, it receives its meaning and soul from his will. Mankind has the absolute right to appropriate all that is a thing."[10] It will be observed that in this passage Hegel passes from "a person" to "mankind" as though the change made no difference. Nothing can be more reasonable than that "mankind" has a right to appropriate material things; nothing more unreasonable than to say that any individual has a right to appropriate any object he pleases, without considering the effects of such appropriation upon others. In so far as Hegel is the asserter of a vast system of absolute, isolated, self-evident "rights," his system is open to all the objections which we have noticed to Locke's theory and to the intuitive systems of Rights and of Morals generally. As regards such questions as that of property, his speculations were prevented from leading to any really satisfactory results by his determination at all costs to defend the existing order of Society and even the most accidental peculiarities of the Prussian Constitution of his time. Every Prus-

[10] *Philosophy of Right*, Eng. trans. by Dyde, p. 51.

sian institution is shown to flow from a necessity of thought: in England and France apparently the development or self-manifestation of the "idea" had constantly gone wrong. But in two ways Hegel contributed to a better theory of property. In the first place, although he still used much of the old individualistic language, he had a more "organic" view of the nature of Society and a juster view of the functions of the State. He took a more spiritual view of the functions which the State could perform, and consequently the moral as well as the merely economic advantages of private property begin to come into prominence. In the second place he insisted upon one particular advantage of property by making much of the doctrine that property is an expression of personality. Sometimes this doctrine is in Hegel couched in somewhat bombastic and by no means illuminating language: "To appropriate is at bottom only to manifest the majesty of my will towards things," and so on. Merely to say that property is an expression of personality does not really close the controversy; for after all, why should personality be expressed except in so far as this is a means to human good or actually constitutes that good? The real difficulty of the problem begins where these expressions of my personality begin to get in the way of other people expressing their personalities too. But the doctrine does supply a much needed corrective to the ordinary utilitarian view, and has tended towards the recognition of the importance both of character and of intellectual development as elements in the total Well-being at which both legislation and individual conduct should aim.

In order to keep our review of modern thought on this subject within limits it will be well to confine ourselves to two of the more recent tendencies of political

thought, and to take our illustrations from this country only. Towards the middle of the nineteenth century the influence of the Utilitarian School in its Benthamite form began to be disputed by the growth of a school which professed to found its doctrine upon the Darwinian doctrine of Evolution. The most popular representative of this tendency was Herbert Spencer. His Ethics were fundamentally Utilitarian; but he attempted to extract from the teaching of Darwinism the doctrine that, as a means to the increase of pleasure, it was essential that the struggle for existence should go on unchecked by excessive State interference. Any meddling with private property which went beyond the most indispensable taxation was held to constitute such an excessive interference; and in his zeal for Individualism he revived what was substantially the theory of Locke, and justified the extremest view of the sacredness of property on the ground of a man's natural right to the produce of his labour. The total inconsistency between this theory and the "scientific" Utilitarianism which he professed in his ethical writings appears to have escaped his notice. He defends the principle as a self-evident or *a priori* truth, and expressly identified his teaching with that of Kant, professing (as was his wont) that he was in no way indebted to that philosopher (whom he had not read) or to any other previous thinker. He pushed his practical conclusions far beyond the point reached by Kant (who, with all his Individualism, was not quite uninfluenced by the German respect for the State), and treated the Free Libraries Act as a mere piece of robbery on the part of Parliament—as much so as the act of any private individual who should walk into my library and help himself to my books. This *a priori* theory has already been sufficiently examined. As to

the attempt to reinforce it by the application of Darwinism to politics, it will be enough to say here that it assumes that the system of private property involves a less measure of State interference than a system of Socialism or even Communism. A very little reflection will show that it is not through an unrestricted struggle for existence, through *laisser-faire* on the part of the State, that an infant of two inherits on the death of his father a landed estate extending over half a county. It is rather owing to an extreme interference on the part of the State with the "natural right" of the strong man to grab the vacant estate, and to the employment of a host of legal officials, police, and (if necessary) soldiers to prevent the fight for the property which in a "state of nature" would inevitably ensue upon the death of the last owner. While the popularity of evolutionary theories in the region of Ethics is by no means at an end, this political application of the Darwinian theories is too much out of harmony with the practical tendencies of the age to exercise very much influence. One still sees a tendency towards an individualistic application of the "struggle for existence" doctrine among men of scientific education; but neither in the region of practical politics nor in that of political speculation can Spencerianism as a system now be regarded as a very serious force.

The other new factor in recent political thought comes from the gradual diffusion among university students, and through them among a wider public, of German Idealism, especially in its Hegelian form, and also, it may be added, of the Platonic and Aristotelian view of the State which was to a large extent the source of what is best in the political thought of Hegel and his disciples. In England the first writer who exer-

cised a powerful influence in this direction was Thomas Hill Green, who first as a tutor of Balliol and then as Professor of Moral Philosophy was the most influential teacher of philosophy in Oxford for some twenty years before his early death in 1882. Most of the recent contributions to political thought of the more speculative type owe a good deal to the teaching of Hegel, either directly or through Green. I may add that, though the debt to Hegel is undoubted, the version of his teaching which is given by his English disciples is far clearer, freer from absurdity, and more soberly thought out than is the presentation of it in the writings of Hegel himself. The reader who begins with Green's *Principles of Political Obligation* and goes on to Hegel's *Philosophy of Right* will probably feel that there is little of value in Hegel which is not better put by Green.

The versions of Hegel's theory about property which are to be found in the writings of his English disciples naturally vary according to the degree of their own approach to Socialism. In the writings of Green the Hegelian reverence for the State and the Hegelian respect for property as the expression of personality are about equally prominent. His strong sense of the necessity of property for the building up of character led him, however, not so much to exalt the sacredness of property in the hands of the large owner, as to insist on the necessity of such legislation as would tend to the diffusion of property as widely as possible among the masses. A more socialistic version of the Hegelian teaching is to be found in the writings of the late Professor Ritchie; while of a more individualistic interpretation the most conspicuous representative is Professor Bosanquet.

Our present concern is, however, not so much with

practical applications or deductions as with the theoretical determination of the ultimate principle by which the question as to the best way of distributing the fruits of industry ought to be decided. When stripped of technicalities, the general tendency of modern political philosophy—at least as represented by the more idealistic or spiritualistic writers—is towards the view that the justification of the institution lies in its tendency to promote for the whole community a Well-being which is not to be identified with pleasure, but which includes the development of character and intelligence as well as pleasure. Property is, as Aristotle held, an instrument of the best and highest life. That arrangement of property is best which tends to secure such a life for the whole community or for as many as possible. It is clear that if this view of the justification of property be adopted, not the same system will be suitable at every time and place. Everywhere the established system has a *prima facie* claim to acceptance. Some system for apportioning wealth is the very first condition of social well-being, and the maintenance of any such system is always better than anarchy and confusion. But every improvement in the established system which will tend to promote that end better has every justification which can be claimed for the existing system. And the existing system loses its justification the moment it is shown that it can be improved. It is extremely important to realize that the question is not as to the rival claims of two sharply opposed, cut and dried systems—one a system of private Capitalism and the other a system called Socialism. Private property has meant an immense number of different things at different times and places. Everywhere there has been some subordination of private property to the authority of the State in the

interests of general welfare; and everywhere some collective ownership has subsisted side by side with private ownership. The King or the State, the Municipality and all sorts of other corporations, have everywhere been large property-owners; and all States have exercised some sort of control over the use men make of private property. The practical question is, "By what system will men be most stimulated to make a maximum contribution to the general welfare, and what system will lead to the widest possible diffusion of the highest kind of life?" Under different conditions every system, from a tolerably extreme individualistic system of private property to a rather extreme collectivism, might be the best possible for the particular time and place. To devise the best possible system for a given time and place is a question rather of practical politics than of political theory.

Are there then, it may be asked, no limits to the socialization of industry which might conceivably be desirable under particular circumstances? Could a complete suppression of all private property be conceivably the best system under certain conditions? Or is there any sense in which we may say that a right to private property is one of the eternal and unchangeable "rights of man"? It is probable that the unchangeable character of human nature will always set strict limits to the possibility of dispensing with individual and family interest as a stimulus to the production of wealth; and some liberty of individual action, some sphere for the operation of individual enterprise and energy, will always be desirable on economic grounds. But a much more certain ground for insisting on the permanent necessity of private property as an institution is to be found in what has already been said as to the necessity for the development of char-

acter. Some liberty of action, some form of arranging one's own life in advance, some freedom of choice, and some certainty that a man will experience the results of his choice, are essential to the development of character; and this there cannot be unless there is some permanent control over material things. Supposing the whole object of life were to secure a maximum average of enjoyment to each individual, it is quite conceivable that, if only certain initial difficulties of organization could be got over, a higher average could be reached by some extreme communistic arrangement under which any man, woman, or child would be "taken in and done for" by the State or the Municipality—fed, clothed, instructed, amused, provided with a set task, compelled to work—from the cradle to the grave. Not so, if the object we have in view is the calling out into activity the individual's best and most varied energies, moral and intellectual. Nobody has expressed this more forcibly than Professor Bosanquet. Professor Bosanquet's Essay on "The Principle of Private Property," in the collection of Essays called *Aspects of the Social Problem*, is perhaps the best brief treatment of the subject which has ever been put into print. He insists that for a man to have everything provided for him reduces him to the level of a child.

> Let us take the child in the family as the extreme type, and leave out any imitation of grown-up life which his parents may introduce by way of discipline, by taking away what he wastes or spoils, and so forth. His relation to things has no unity corresponding to his moral nature. No nerve or connection runs through his acts in dealing with the external world. So with his food; he may waste or throw away his food at one meal, he gets none the less at the next (unless by way of discipline). He gets what is thought necessary quite apart from all his previous action. So too with his dress.

The dress of a young child does not express his own character at all, but that of his mother. If he spoils his things, that makes no difference to him (unless as a punishment); he has what is thought proper for him at every given moment. So with travel, enjoyments, and education up to a certain point. What he is enabled to have and do in no way expresses his own previous action or character, except in as far as he is put in training by his parents for grown-up life. The essence of this position is, that the dealings of such an agent with the world of things do not affect each other, nor form an interdependent whole. He may eat his cake and have it; or he may not eat it and yet not have it. To such an agent the world is miraculous; things are not for him adjusted, organised, contrived; things simply *come* as in a fairy tale. The same is the case with a slave. Life is from hand to mouth; it has as such no totality, no future, and no past.

Now, private property is not simply an arrangement for meeting successive momentary wants as they arise on such a footing as this. It is wholly different in principle, as adult or responsible life differs from child-life, which is irresponsible. It rests on the principle that the inward or moral life cannot be a unity unless the outward life—the dealing with things—is also a unity. In dealing with things this means a causal unity, *i.e.* that what we do at one time, or in one relation, should affect what we are able to do at another time, or in another relation. I suspect that the difficulty in accepting this principle is largely due to a mistake about inward morality—, to treating the pure will for good as if it could exist and constitute a moral being without capacity for external expression. This is a blunder in principle. If all power of dealing effectively with things is conceived absent, inward morality, or the good will, vanishes with it. I will return to this point in dealing with the "no margin" doctrine.

Private property, then, is the unity of life in its external or material form; the result of past dealing with the material world, and the possibility of future dealing with it; the general or universal means of possible action and expression corresponding to the moral self that looks before and after, as opposed to the momentary wants of a child or of an animal. A grown man knows that if he does this he will not be able to do that, and his humanity, his powers of organisation, and intelligent self-assertion, depend on his knowing it. If he

wants to do something in particular ten years hence he must act accordingly to-day; he must be able in some degree to measure his resources. If he wants to marry he must fit himself to maintain a family; he must look ahead and count the cost, must estimate his competence and his character. That is what makes man different from an animal or a child; he considers his life as a whole, and organises it as such—that is, with a view to reasonable possibilities, not merely to the passing moment.[11]

All this is perfectly true and admirably put. The necessity for some liberty and some variety of external circumstances and modes of life for the highest intellectual development is another important consideration which has been much insisted upon by such writers as Durkheim and Simmel. And here it is important to notice that the plea for liberty is not sufficiently met by insisting, as has been so eloquently and humorously done by Mr. Lowes Dickinson, upon the absurdity of supposing that the propertyless labourer under the ordinary capitalistic régime enjoys any liberty of which Socialism would deprive him.[12] For it may be of extreme importance that *some* should enjoy liberty—that it should be possible for some few men to be able to dispose of their time in their own way—although such liberty may be neither possible nor desirable for the great majority. That culture requires a considerable differentiation in social conditions is also a principle of unquestionable importance. But it must not be assumed that liberty and differentiation and opportunities for the development of character in some or all can only be secured by a continuance of the whole system of private Capital as it is now understood.

[11] Essay on "The Principle of Private Property," in *Aspects of the Social Problem*, pp. 309-311. For a more elaborate treatment of the subject see his *Philosophical Theory of the State.*

[12] *Justice and Liberty: a Political Dialogue* (1908), *e.g.* pp. 129, 131.

Professor Bosanquet and many other philosophical critics of Socialism seem to forget that Socialism does not aim at the extinction of private property but only at that of private capital. Under any scheme which is socialistic without being communistic, private property might very well exist in the only sense in which the vast majority (say) of Post Office employees now own property. A postman under Socialism would be able to enjoy property with all its moral advantages as fully as now, except that he would be unable to get interest on the few pounds which he might at present save and put into the Savings Bank. It could scarcely be contended that the right to get a few shillings interest upon such savings is absolutely necessary to a man's moral well-being. Professor Bosanquet assumes much too readily that the moral advantages of Socialism could not be secured without the permission of capitalization and of inheritance. No doubt, when we think not so much of the moral effects upon the average individual as of the advantage to the community generally of having some persons in a position to choose their own tasks and dispose of their own leisure, the difficulty of getting the advantages of property without these incidents of our present capitalistic system becomes much greater. I am myself disposed to think that the institution of property cannot bring with it its full advantages, economic, moral and social, without *some* form of capitalization and *some* rights of inheritance, however much these rights may be curtailed and controlled by the State. But the form which it is desirable that the institution of property should assume must be settled by detailed argument as to its advantages and disadvantages; it must be settled by experience, and with reference to each particular stage of social development. We cannot justify the whole

capitalistic system *en bloc* by the bare formula that property is necessary to the development of individual character. The most that we can claim, as a general principle applicable to all stages of social development, is that without some property or capacity for acquiring property there can be no individual liberty, and that without some liberty there can be no proper development of character; and further that considerable leisure and liberty of action, such as is now secured by private capital and inheritance, *for some persons* must always be socially desirable. In this sense we may lay it down that the institution of property is one of the permanent conditions of social Well-being or (if we please) one of the inalienable "rights of man." The exact form which it should assume must be settled for each particular stage of social development and each particular country by the gradual accumulation of experience, the gradual development and the gradual criticism of detailed suggestions for social improvement.

Another remark that may be made upon Professor Bosanquet's defence of private property is that, while he admirably develops the good effects of the present system upon character, he seems almost blind to the bad effects upon character of the present almost unlimited competition and facility for accumulation. It is undoubtedly a mistake to talk as though all that was required for "character" was a vague and flabby "altruism." In the interests of Society itself such virtues as industry, foresight, self-reliance, self-respect, and the like are quite as important as the more obviously and immediately other-regarding virtues. But the intense selfishness fostered by our present system must not be ignored. I must, however, leave to other writers the further discussion of the problem of Property in

its practical application. The leading idea which I have attempted to bring out by means of this brief historical sketch is that the justification of property must depend not upon any *a priori* principle but upon its social effects. Among these effects a prominent place must always be given to its effects upon character, and the justification of every proposed amendment of the institution as it now exists must depend upon these same principles. The problem of the future is to devise a gradual modification of the system by which its advantages—the encouraging of industry, originality, energy, enterprise, individuality which it affords, the measure of liberty for all and the greater liberty which it secures for a few, the training in character and the development of individuality, the sense of responsibility and of family solidarity which it encourages—shall be secured without the outrageous inequalities, the material hardships and uncertainties, and the injury to character which are produced alike by excessive wealth and excessive poverty.

III

THE PRINCIPLE OF PRIVATE PROPERTY

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SUMMARY

THE principle of private property has the twofold character of all rights. It is a right vested in individuals thought of as set over against one another, and it requires the recognition and protection of society for its existence. Extreme views which neglect either of these aspects are too obviously wrong to need consideration. Differences of opinion about the right of property arise as too exclusive attention is paid to the claims of the solidarity of society or of the independent development of its individual members. The first attitude gives rise to the view that property is entirely the arbitrary creation of society, the second to the view that society must recognize the right of property but cannot modify or control it. The attempt to make the right of property inherent in the individual apart from society is false to the facts of the creation of wealth. Yet the denial of such rights often leads to mere political opportunism. The good of society is the criterion of rights, but that good can only be expressed in the good lives of individuals. Private property can only be defended as a condition of the good life.

Before such defence is attempted it must be noticed that the right of private property has taken the most diverse forms, and the same defence will not serve all forms.

We might try to find a defence of private property in the necessary separation of men in some respects. If the production of wealth is co-operative, much consumption is necessarily separate. But property in things that are separately used, in so far as they are so used, is not the principle of private property but of Communism. Communism is an attempt to confine property to use. The disadvantages of such an attempt to distinguish property in matter not in use and in matter in use, and confine the first to the community, are that it is hardly compatible with the discovery of new uses and needs, that it gives enormous power to those who govern the community, and that it takes from the individual the necessity for deliberation and foresight. Private property is essential to the full development of the individual.

This, however, is not an objection to Socialism, which defends private property in goods to be consumed but attacks it in the means of pro-

duction on the ground that the production of wealth is co-operative. Consideration of the difficulty of distinguishing between the means of consumption and of production shows that most property does not consist in things but in power over other men, and suggests that the real basis of the attacks on property is the evils of the irresponsible power it bestows.

Nevertheless something can be said for private property in the means of production. Although the production of wealth is co-operative it is not therefore impossible to distinguish between the different values of the work of different individuals, and it is essential to encourage in individuals originality and invention. Giving to certain individuals power to direct and organize the work of others is also essential. The principle of private property in the means of production may be defended as being but the carrying out of the principles of "tools to those who can use them."

On the other side the following considerations must be noted:

1. This defence does not apply to the rights of bequests and inheritance, which must be defended on very different grounds.

2. The amount of money earned by any individual may represent only very roughly his power to serve society.

3. The fact that the power given to individuals by private property tends to efficiency when rightly used, does not remove the evils produced by the irresponsible use of that power. We are still faced with the problem of how we can combine efficiency with control in the interests of society. But this is precisely the problem of the control of political power which has in the political sphere been largely solved. The political analogy should show us that no simple or ready-made solution of the problem of property is possible, but may also suggest the lines along which a solution is likely to be found.

III

THE PRINCIPLE OF PRIVATE PROPERTY

The principle of private property partakes in a peculiar degree of the twofold character of all rights. On the one hand, as the words show, it implies a right belonging to individuals, and to individuals thought of as set over against and excluding one another. Private property is something in which a man can express his own individuality and character, and which he can prevent other people from using. In a society with a developed system of private property wealth is thought of as divided up into separate lots: each member of society has in his property a sphere of his own. On the other hand private property, just because it is a right, exists only in and through society. Without mutual recognition of rights, without respect for law and its decisions, property could not go on existing. As society develops, the importance of a man's power to defend himself, of his physical grasp over his possessions, becomes less, but private property does not diminish but increases. A man's own is what society and law allow him, or what they recognize to be his. On whatever principle this recognition is based, it is by virtue of it that private property exists. Private property then, like other rights, is a creation of society, yet in the institution of private property society seems to be denying its nature and insisting not on the social but on the individual and exclusive nature of its members.

To neglect either of these two aspects of the right of property is fatal. For if you take away the recognition of rights which implies society, property disappears, and if we would vest all property absolutely in society as a whole, we should be denying the separate existence of individuals. Even the most extreme form of Communism must allow a man's property in the food that he eats. Communism is only an attempt to reduce to a minimum the right of private use implied in property. It cannot abolish it altogether.

These two extremes then need not trouble us. Some sort of recognition must be given to the social as to the individual character of property. Differences of opinion as to the place which property ought to occupy in society arise from the difficulty of adjusting the claims of the solidarity of society on the one hand and the independent development of its individual members on the other. Some political thinkers would have all institutions directed to the encouragement of individuality and leave the solidarity of society to look after itself. Others take just the reverse view.

When interest is focussed on the individual, society is sometimes looked upon as a system of mechanical and external alliances. Property is held to be not created though it must be recognized by society. The right of property then is thought to have its source in the individual regarded not as a member of society but as an independent unit. It is the business of society to maintain and make effective this right, but it has no power to modify it, no control over it. When, however, such stress is laid on the fact that society is an organic whole that the units composing it are thought incapable of independent existence, it is possible to maintain that inasmuch as property would not exist without society, it is created by the definite act of society to suit its

convenience, and can be for this same reason modified or destroyed by society at will. We ought not on this view to try to go beyond the existing right. We cannot discuss what rights of property the State should recognize, only what it has recognized or now wills to recognize.

The classical exposition of the first of these views is found in Locke's *Second Treatise on Civil Government*. It has been described and examined in another Essay, and need not detain us here. It seeks to found the right of private property on the principle that a man has a right to the wealth which he has himself created. The principle is innocent enough, but it will not serve the purpose desired of it. It will not suffice to fit the facts. For much private property cannot possibly be described as created by those who own it, and, a more fatal objection, wealth is not created out of nothing, but by the manipulation of previously existing wealth or sources of wealth. If these are privately owned, then all members of society have not an equal opportunity of creating wealth, and therefore the apparent justice of the principle that each man should own what he has created is illusory. Further, the creation of wealth is not the work of separate individuals working independently, but is a co-operative undertaking in which in one way or another the whole community takes part. In any society of at all developed economic structure there are almost no articles of value of which a man can say, "This I and I alone produced."

The theory really implies that individuals produce wealth in isolation, and that law and society then recognize the position from without. The facts are quite otherwise. Men cannot be cut loose from their past, and regarded as beginning to produce wealth from what has been nothing before, nor as separated from their

fellows in the act of production. Society has its part in the production as in the recognition of property.

If society allows each of its members to own property which is recognized as his and therefore not another's, if it seems to think of the individual with his property as cut off from his fellows, that independence, the private nature of property, is not based upon the private nature or individuality of the production. The wealth which men possess as property was made by co-operation, the separate contribution to which of each member of society cannot be exactly estimated. Private property is recognized by society not in virtue of a right inherent in the individual, but because it is an institution which is thought to be for the good of society as a whole.

This does not necessarily mean that private property is therefore only the creation of convention. The replacement of the doctrine of absolute natural rights inherent in the individual by the doctrine that the standard of all rights is the convenience or good of society, seems sometimes to imply a justification of political opportunism. For the convenience or good of society as a whole might be interpreted as the convenience of society at any particular moment, or worse still the convenience of an existing government. The real service of the doctrine of natural rights was that it gave content to the conception of the good of society, that it emphasized the truth that the good of society can only express itself in the good lives of its individual members. We may still then maintain that the principle of private property ought to be recognized by society, if we can show that it is an essential condition of the good life. And this is the only possible line of defence of the principle.

Here one thing must be said in warning. Other

Essays have shown that the right of private property has existed in the most various forms, exists in different forms at the present day, and has had the most different effects. Yet I have talked so far of the principle or the right of private property as though that were something simple and always the same. Any discussion then of the part played by the institution of private property in society might seem to require a vast historical enquiry, unless we can distinguish the principle of private property from the various forms in which, or the varied extent to which, that principle has been recognized.

It is possible, I think, to do this by going back to a phrase used at the beginning of this paper. In the institution of private property society seems to be insisting on the individual, exclusive nature of its members. We are all members one of another. No man liveth to himself or dieth to himself. We are what we are through the influences of society. In a very real sense it is true that there is nothing of which we can say that it is our own because we alone have made it, or because it interests or affects us only. Yet what is legally mine is not another's, and I have sharply-defined and clear-cut rights over my property. On what grounds can such an artificial distinction of man from man be justified, and how far ought it to be extended?

We might begin by attempting to base private property on actual facts. Men in society form an organism and yet they remain in some respects distinct. We cannot separate men in the production of wealth, that must always be co-operative; but we obviously can in the consumption. A dinner that another man eats is no use to me. There are some things which, from the necessities of our physical nature, must be used separately. Private property then may be justified if it is

based on use. Those things are rightly privately owned, it will be said, which are necessarily privately used, and in so far as they are so used. Such a principle, however, has little to do with the principle of private property as commonly understood. Rather, it is the principle of Communism. For Communism is an attempt to confine property to use. The community takes over all rights in things that are not being used, and gives to individual members of society only these rights which are coincident with prescribed uses. Private property, as generally understood, implies rights over things when they are not being used, the right to use or refrain from using, the right to allow or to prevent use to others.

A successful state of Communism would imply that all care of property when it was not being used, all provision of property in anticipation of its use, and the reconciliation of all conflicting claims to the use of the same property would be the business of the community. The individuals would only have to think what they wanted to do, to manifest their needs, and if the communal organization was adequate, these would be supplied. Such a system of society is not unthinkable. It can easily be realized in a family or in a monastery; but it is a principle very difficult to realize in an ordinary political society, and it has a serious moral disadvantage. The position of property in anticipation of its use could be organized communally only if the uses of property remained uniform. Such an organization would be hardly compatible with the discovery of new uses and needs by the individual members of society. Further communal organization can only mean organization by some individuals on behalf of the rest, and would be possible only where, as in a family or a monastery, most members of the community were content

to allow others to arrange their lives for them. If the control over wealth when it is not being used is separated from the right over it in use, and the former assigned to the community, and the second to the individual, the necessity for deliberation and foresight is taken from the individual. The moral advantage of private property over Communism is that it makes the private person think of his life as a whole, and realize his responsibility for his actions. Unless we learn that if we are reckless now we shall be less able to do what we want in the future, and that not for want of the permission of others whom we might try to get round, but because of the simple law that you cannot eat your cake and have it, we should probably remain children all our lives. We need not go to actual systems of Communism to discover that. It is equally apparent in the life of those unfortunate sons of very wealthy and foolish parents who are sure that they will be given as much money as they may want whatever they may do, as in those whose livelihood is so insecure that it is not worth their while to look ahead. Private property enables the individual to develop that power of planning and deciding for one's self which is as important a factor in the good life of society as the sense of community and interdependence. Its ultimate justification is the worth of individuality, and the fact that individuality expresses itself in relation to external goods. This point is so familiar and obvious that there is no need to labour it. Most people recognize by this time of day that the good of society is not helped but hindered by the elimination of individuality and character in its members.

Opinions differ as to where these considerations should lead us. They are often, for example, adduced as an argument against Socialism, but private control

over the spending of income is as compatible with Socialism as with the existing system of property. The Socialist would indeed maintain that under Socialism more people would be in a position to enjoy the advantages of private property; but Socialism attacks not private property in general, but private property in the means of production; and it might well be contended that while spending or consumption should be as individual as possible, the production of wealth is essentially a co-operative undertaking in which the emphasis laid on individuality by private property is disadvantageous. Any monopoly of the means of production can only be harmful. Let us see then what there is to be said for private property in the means of production.

The first point which might be made is that no clear line can be drawn between means of production and means of consumption, or between capital and income, for capital is only created by the income or the wealth owned by individuals being set aside or used for a particular purpose. We can point to almost nothing that is always a means of production or always a thing to be consumed.

This objection is not a fatal one because there is no doubt that we can roughly say when wealth is being used as capital and when as income. But in it we are confronted with a fact about property which is of the utmost importance. We often think of property as consisting of things. When we insist on the importance of property as a means to the expression of individuality, we think of the importance of a man's possessing *things* that are his own, his own books and pictures, his own house and so on. But in a society whose economic organization is at all developed, most property consists not in rights to the enjoyment of things, but

in rights to services; the power to make men act in certain ways. This power, it may well be contended, is as essential a part of what makes individuality in life as is the possession of objects. Far more than such possession it makes possible the abuses which are the real grounds of attacks on the principle of private property. The desire for wealth to consume has after all got its limits, the desire for power over other men's lives has not. The difficulty of distinguishing between property used as a means of production and property consumed may be used not only as an argument to defend the first because of the virtues of the second, but to attack the second because of the vices of the first.

But something else can be said for private property in the means of production. The argument may be put in some such way as this.

It may be true that all productive work is co-operative and that, therefore, no wealth is produced by individuals in isolation, but it does not follow that the part played by different individuals is the same or of equal value. Co-operation is the combining of different wills and different minds, and all deliberation and contrivance comes originally from individual minds. Efficient production is only possible if encouragement is given to originality and invention in individuals as much as to the co-operation between all the members of society. It may be true that power over and control of other men is liable to abuse, but it is also an essential instrument in achieving anything of note in combined effort. If private property gives men the power of directing others in the work of co-operative production, that is no evil but a manifest good if that power is in the hands of those who can use it best. Further, while it may be true that we cannot divide up wealth into parts and say this part was created entirely by this

man and this by that, it does not follow that we cannot estimate the relative importance of the parts played by different men. On the contrary, a man's income does roughly express the value which society puts upon his services, and the money a man makes is a fair criterion of his capability to use profitably the power over other men's lives which the possession of property gives. Such a criterion may not be infallible. No doubt it is not, but it is a better criterion than any other which can be substituted for it. The principle of private property in the means of production is but the carrying out of the principle "tools to those who can use them," and that surely is a principle conceived in the interests not primarily of the individual but of society. In this argument there is much truth, in so far as it is an argument, that individuality in the production of wealth is for the good of society as well as individuality in the spending of it, and must be made possible under any system of property. But it does not follow that such individuality is best realized under the existing system of private property. Against that particular conclusion the following considerations may be urged.

1. Such arguments would not justify the rights of bequest or inheritance. It may be that the power of bequest in some form is a necessary incentive to effort. It is also true that the solidarity of the family which the right of inheritance encourages, though the right of bequest does not, is for the good of society. Nevertheless in themselves these rights go against the principle of tools to those who can use them, in as much as they put great power into the hands of those whose only claim to it is that they are the natural or chosen heirs of those who have shown the capability of using it. Any defense of these rights must ultimately be based upon a recognition of the importance and value

of the existence of associations within the State intermediate between the State and the individual, such as the family or what are called voluntary associations. The attempt to enforce rigidly the principle of tools to those who can use them or money to him who has earned it, and to give all else to the State would deny the value of all such lesser bonds and communities. The permanence of the family has a social value which the right of inheritance helps to maintain. The practice of charitable bequest led at an early date to the recognition by law that there are certain purposes which may well be made more permanent than the lives of the individuals who serve them, and which are therefore allowed to own property and regarded indeed as in some sense persons. How far the rights of property vested in corporations should be the same as those vested in individuals is a subject of too great complexity to be entered into here. For our present purpose it is enough to note that it cannot be solved by the application of any simple rule. It demands the adjustment of various interests, each having a value of its own. The problem of the position of voluntary associations in the State is one with a long history behind it, and the powers of such associations to hold and inherit property has played a large part in that history. How to preserve the variety and initiative which the existence of such associations makes possible consistently with maintaining the stability of the whole State and the freedom of individual members of each association and of the State, is perhaps the most difficult of political problems which confronts us to-day, and one of which there is certainly no final solution. As little can there be any final settlement of the rights of property which are connected with it.

2. To return to the argument that the existing sys-

tem of private property is based on the principle of tools to those who can use them, exceptions having been now made of the rights of inheritance and of bequest, it is clear on consideration that the amount of money earned in any undertaking is obviously only a very rough test of its public utility. There are some ways of making money, *e.g.* the promotion of lotteries or gambling, which the State definitely forbids, thereby claiming that the collective verdict of the community may override what may be called the economic verdict expressed in the fact that so many individual people are prepared to pay money to the promoters of lotteries. The same principle is implied in the special taxation on lotteries in countries where they are permitted, or on the drink traffic. It is also implied in the State endowment of research or education. It is there recognized that research has a value to the community which is not recognized in the value given to it in the open market. For it is something which pays in the long run but perhaps pays no individual immediately. This is expressed in the common phrase "the State or a corporation can afford to wait for its money." The community's judgments of value can take in a wider range of circumstances, and take thought for a longer period of time, than the judgments of value expressed in the economic preferences of individuals. Even so the argument from money earned to public service rendered would only hold of a system of perfectly free competition. Actually it is vitiated wherever monopoly exists.

3. While it is true that the power given to individuals by private property tends to efficiency when rightly used, that does not remove the evils produced by the irresponsible power thus acquired with property. It may be the case that as yet no means have been devised which can prevent these evils without also

taking away the advantages of private property, and that they are a price which is worth paying. On that point opinions will differ. But obviously it would be desirable if the efficiency produced by the encouragement of individual initiative and the entrusting of power into the hands of individuals were combined with some means of preventing that power being abused, with some method of enforcing responsibility. Even if we hold, as some do, that to encourage in individuals possessing property a sense of this responsibility is all we can compass at present, we need not give up hope of contriving something better in the future.

Here we have the analogy of the control of political power to encourage us. Indeed once we realize that property exists mainly as power, we can see that the problem of the proper regulation of property is only the old political problem of the recognition and control of political power in a vastly more complicated form. The same difficulty of combining the efficiency which is given by the concentration of power with the prevention of its abuse and the insistence that such power shall be used for social and not for anti-social ends, has been realized and to some extent solved in the political sphere. The pressing need for strong and efficient government in the sixteenth and seventeenth centuries made writers like Hobbes treat political power as the absolute property of the sovereign, and denounce any attempts to limit such power or make it responsible as fatal to the efficiency of government. Means of combining efficiency with popular control have been evolved but slowly; no ready-made or simple solution could possibly have been found; it needed the political experience of generations to achieve a system of responsible government. At first the possibility of good government depended on individual rulers choos-

ing to act as though they were responsible to their people. But there has grown up such a system of government as makes the irresponsible use of political power difficult if not impossible.

The problem of combining the free use of power and individual initiative with their control in the interest of society, of giving scope and yet preventing the evils arising from irresponsibility, will probably be much more difficult in the sphere of economic production than in that of government for various reasons. (1) The problem has been solved in the political sphere only by a strict limitation, in the early stages of the solution at least, of that sphere. The power given by property extends to every corner of social life, and is infinitely more indeterminate and fluid than political power. (2) The problem has to be solved without destroying private property in the means of expenditure and consumption, and it is not easy to draw the line between the two forms of property more than roughly. (3) Initiative and inventiveness are more important in the economic than in the political sphere, and regulation of economic will have to be more elastic than regulation of political power.

We may be confident that no simple ready-made solution of it will be found. But that is no reason for supposing that the task is impossible or that the present makeshift system is the only one that is possible. Without being able at this moment completely to work out a better system we may be able to see the direction in which development is desirable. In the meantime, if we realize that the existing institution of private property is not based on absolute right and has no absolute but only a partial justification, in that while it makes for the good life of men in society it does so at a considerable cost, we may see that the system will be

tolerable only if the possessors of property act as the good sovereign of earlier times acted—as though, that, is, they were under obligations which law is not yet able or does not think it convenient to enforce.

IV

THE BIBLICAL AND EARLY CHRISTIAN IDEA OF PROPERTY

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SUMMARY

THE discussion limited for practical reasons to one specific type of religion, the Biblical and Early Christian.

Here the religious view of Humanity is determinative of property.

I. Old Testament religion: its genius and social implications, as realized at various periods in Israel's history.

The principles of social justice emphasized by the Hebrew Prophets, both earlier and later, and in its own way by post-Exilic Judaism generally.

The prophetic ideal re-emerges in full power in John the Baptist and in the Gospel of Jesus Christ.

II. New Testament religion: the fundamentally social nature of Jesus's Gospel of the Kingdom of God on earth, as based on the Divine Fatherhood. Here the ideas of Divine "stewardship" for all a man holds, and of the rightful use of property as relative to the welfare of persons, attain fresh depth, emphasis, and range. Such use of property a test of loyalty to the Heavenly Father and His Will for men.

This felt from the first, but applied in various ways according to current ideals of human need.

The "communistic" temper of the Primitive Church, on a voluntary basis of Christian Love, in the New Testament and in sub-apostolic writings. *The Preaching of Peter* affords a *locus classicus* for the early second century and for the ante-Nicene ideal generally. The Church's sensitiveness to morally dubious trades, and especially usury.

First explicit discussion of property (to the point of riches) in Clement of Alexandria early in the third century. It continues the old tradition, seen also in Tertullian and Cyprian, but adds some more modern considerations.

Lactantius, early in the fourth century, the next exponent of the Christian theory of property, which he treats in the light of Justice and Humanity.

Certain limitations under which the positive Christian idea of property operated within the Roman Empire, first as pagan, then as officially Christian. These due to the time-limitation of the Advent Hope, the Church's earlier status as a small minority, and the genius of the Gospel as primarily spiritual in its interest.

Hence (*a*) toleration of slavery as an institution, and (*b*) "other worldly" asceticism. As the foreshortened perspective of the Kingdom of God on earth was outgrown by experience, the existing social order assumed a more positive significance as something to be leavened by Christian principles, especially after Constantine's conversion. But the Church's grasp on Christian principle in this sphere was no longer such as to make it take full advantage of the new opportunity, which was largely lost. Thus the idea of property really remained pagan and Roman rather than Christian. The fact is that the Church's idea of the Gospel had itself changed in emphasis. The idea of "retreat" from the world now widespread: the morally aggressive power of "faith" impaired: the negative aspect of Monasticism and of the Augustinian doctrine of Original Sin.

"Thy will be done on earth as it is in heaven" an ideal largely lost since early days; is now being realized as never before.

Responsibility the note of the religious idea of property, especially in Christianity, which lays such stress on the value of persons as compared with things. Betwèen the competing interests of persons, God is the Great Arbiter as regards just use of His gifts of property.

IV

THE BIBLICAL AND EARLY CHRISTIAN IDEA OF PROPERTY

Our subject is the religious idea of property as traceable in the Bible and in the Early Christian Church. Such limitation of treatment as this involves is dictated by practical considerations. It seems best to concentrate attention on that part of the whole subject which has most direct bearing on the form in which the idea of property exists to-day in most minds of the European type of culture. For our present purpose, then, the significance of religion generally for the idea of property may best be studied under the specific forms of that religion which has so largely moulded European society and our own attitude to its institutions.

Every civilization has at its heart its own idea of Humanity, which, in the last resort, controls its social thought and practice. Through all varieties of this idea certain broad distinctions run. Society may be viewed primarily as a community, the general well-being of which is all in all, or on the other hand as made up of individuals, the particular well-being of whom is of prime importance. Further, on either view humanity may be viewed on a materialistic basis, as having its sole ground in Nature in the same way as all else known to our senses; or again, on a spiritualistic basis, as having its real meaning, and therefore its ultimate motives of social conduct, in relation to some-

thing above Nature, to some Being akin to, and the proper source of, the highest element in us. Now it is obvious that, according as one or other of these conceptions of *persons* and their destiny prevails, it must profoundly affect both theory and practice as to the distribution and use of the things through which persons find more or less scope for self-realization, that is, touching property in its widest sense. This being so, it cannot but be that the religious view of humanity must contribute a factor of profound and indeed decisive import to the working idea of property, so far as religion is a real thing to those who profess it. Religion is in principle all or nothing: by its fruits it is known one way or another. True, what once had ethical meaning may be narrowed down to mere sacred ritual or custom, with no conscious relations to living conduct, individual or social. But this is simple lapse into unreality as regards one aspect, and in all higher faiths the primary aspect, of the full fact of religion, which is in idea coextensive with the whole life of personal responsibility. The religion of the Bible at least, and of the Early Church, was for the most part really effective in moulding men's social ideals and conduct; and we shall now trace in outline the idea of property which underlay the historical development of such religion.

I

In Old and New Testament alike the idea of God ruled human life in all its relations. At all stages of Israel's history we find the sense of social duties as having their chief sanction in the Divine Being with whose sovereign rights each Israelite felt himself face to face, in virtue of the Covenant relation on which the national existence was based. Further, at a certain

stage, visible for instance in Is. xl. ff., there emerges a clear consciousness of the God of Israel as the Creator and Upholder of all things. In this character He possesses absolute rights to the allegiance of all men, and not only of His Chosen People, in soul, body, and goods of every sort. All these things, powers of mind and body as well as material possessions, are held in stewardship for God, and for His ends in creating mankind to show forth and share His "glory" or manifested nature. It was relative to this outlook on the world, and on life in society, that property was conceived of in Hebrew religion; and it can readily be imagined how powerful an incentive to social justice and to social reform, as ideals grew in range and purity such a conception would present to truly religious minds in Israel.

Let us recall some of the leading expressions of Old Testament religion bearing on the matter in hand. "In the beginning God created" the earth and all upon it, and finally man as the crown of His purposes on earth. Man, then, was created as God's vice-gerent over the lower creation, as being "made in the image of God," or as Psalm viii. has it, "but little lower than Deity" (*Elohim*), in respect of his latent capacities, insignificant though man is on his material side. Accordingly David is described as addressing God as follows, in connection with the offerings of Israel for the building of the Temple (1 Chron. xxix.):

> Thine, O Lord, is the greatness, and the power . . . and the majesty: for all that is in the heaven and in the earth is thine; thine is the kingdom (sovereignty), O Lord, and thou art exalted as head above all. Both riches and honour come of thee, and thou rulest over all; and in thine hand it is to make great, and to give strength unto all. . . . But who am I, and what is my people, that we should be able to offer so

willingly after this sort? for all things come of thee, and of thine own have we given thee. . . . O Lord our God, all this store . . . cometh of thine hand, and is all thine own. . . . O Lord, the God of our fathers, keep this for ever in the imagination of the thoughts of the heart of thy people, and establish their heart unto thee.

Here we have a perfect expression of the genuine Hebrew view of human property—all that a man can call his own and control—as verily the gift of God, to be held before all else in trust for the Giver's own uses, for the realization of His kingdom or manifested sovereignty on earth. Such rights, then, as any man can have in anything he possesses—his faculties of body and mind, lands and all in or upon them, and what is "produced" (by God's power and bounty) as result of human faculty applied to the resources of Nature—such "property" rights are purely relative, derivative, conditional, in the presence of God's sovereign overlordship of all He has produced, and is still producing, through the subordinate agencies of Nature and man. None on earth has absolute or indefeasible rights, but all only in so far as they fulfil the terms of the stewardship entrusted to them by God and the duties to others which flow therefrom. This applies alike to nations and to individuals. But the Divine will for and in the larger unit of its purposes must be regulative of the same will for and in the smaller unit of humanity, so that the rights of the latter are relative to those of the former as a whole. In other words, the general or national welfare is prior to and determinative of that of the individual in the Divine order, and so by right.

To this conception of property, its duties and rights, the general trend of the Old Testament data broadly and normally conforms; and there are constant signs of a tendency to reform actual conditions, when these

seem to diverge intolerably from the Divine ideal. The various forms of the Mosaic legislation found in the different codes embodied in the Pentateuch illustrate this tendency.[1] We can see the process of social reform going on before our eyes, and realize the religious motives which animated reformers, in the pages of the Hebrew Prophets. The occasion of their utterances was the great change for the worse in economic conditions—away from a relatively equal ownership of land—which was due partly to losses from foreign invasion, plunging the poor into debt to the richer members of the community, and partly to the new factor of commerce fostered by foreign intercourse. In these and other ways the sacred bond between the family and the land—conceived to belong to the nation's God and to have been given by Him to all Israelites to enjoy in essential equality for ever—was broken. There arose a landless and dependent class, sometimes to the point of enslavement of Israelite to Israelite. This last was an abomination in the eyes of all save those who themselves made property of their fellows. But even the lesser abuse, as a virtual negation of the idea of brotherhood before God, the real owner of the land and of all its increase, stirred prophets like Amos, Hosea, Isaiah, and Micah to witness that social justice is of the essence of true religion. Their constant language is of the "oppression" of the weak by the strong, as when social and economic advantages were used to increase any accidental inequality in the distribution of material goods, and this often under the forms of law and justice. "Jehovah will enter into judgment with the elders and princes of his people. It is ye that have eaten up the vineyard; the spoil of the poor is in your

[1] See Dr. W. H. Bennett's Essay in *Christ and Civilization* (1910), *passim*.

houses. What mean ye that ye crush my people, and grind the face of the poor? This is the oracle of the Lord." Or again, "Woe unto those who join house to house, who add field to field, till there is no more room, and ye are settled alone in the midst of the land."[2] Here what is chiefly condemned "is really the iniquitous distribution of the gain and loss arising out of the social changes" of the period: "the profit mainly falls to a limited class . . . callous, self-seeking, and self-indulgent, and deepens their moral deterioration; while the loss is borne by the poor and helpless."[3] Over against such injustice and oppression, flowing from self-seeking use of economic power, the prophets place the outraged Justice of the all-sovereign King of Israel, who is the one real Owner of the land and of its produce, and whose prime concern in its use is the well-being of all His People. Any other use of it is sacrilege, simply robbing God. This is the idea underlying the Sabbatical Year and the Year of Jubilee. The former provided for the poor from the land as it lay fallow in the seventh year (Ex. xxiii. 10 f.), as well as for the release of the Hebrew from bondservice (Ex. xxi. 2 ff., Deut. xv. 12 ff.), or from debts (Deut. xv. 1 ff.). By the latter Leviticus makes similar provision for the recovery of "liberty throughout the land," for all Hebrews, at the longer interval of fifty years. As regards land, it all reverts to its original owners (xxv. 10); it "shall not be sold in perpetuity; for the land is Mine; for ye are strangers and sojourners with Me" (*v.* 23). As to bondservice, even in the modified form of hired service, which alone Leviticus allows, it too then ceases; "for unto Me the children of Israel are servants . . . I am the Lord your God" (*v.* 55; cf. 42).

[2] Isaiah iii. 14 f., v. 8; cf. i. 17.
[3] Bennett (as above), p. 60.

Both of these ordinances, then, in theory at least, recognize in a striking and radical way the sovereign rights of Jehovah as the Overlord, as it were, of the theocratic Feudal System of Israel, and the supreme value of persons over property in His eyes. It is in this light that the Eighth Commandment must be read. So viewed, it tells against all accumulation of land and wealth as "private property" which affects inequitably and oppressively the opportunities and welfare of men and women, as God's own special property.

If the later prophets, a Jeremiah or an Ezekiel, when face to face with a disintegrated Israel, "feel that a true social organism can be created only out of true individual members, they never abandon the idea of founding a new social organism. Individualism is but the necessary stage towards this," by creating more responsible moral units.[4] While trying to lay the foundations of religion more deeply in the individual conscience, and on God's Covenant in the heart, they do not forget the cause of social justice. They, too, echo in effect[5] Micah's memorable words (vi, 8): "He hath showed thee, O man, what is good; and what doth Jehovah require of thee, but to do justly, and to love mercy, and to walk humbly with thy God?" Here we have the very essence of prophetic religion, social justice and mercy, rooted in an abiding sense of God's eye upon all a man's ways. It is the exact opposite of the attitude in which one claims a right "to do as one pleases with his own property." The decisive question for a man who "walks humbly with his God" would be, "Lord, what would'st Thou have me to do with Thine own?" By whatsoever means it has come

[4] Dr. A. B. Davidson, article "Prophecy" in Hastings's *Dict. of the Bible*, vol. iv.

[5] Jer. vii. 6, xxii. 3, 13, xxxiv. 8-22; Ezek. xviii. 8, xxxii. 7 f., 29, xxxiv. 8, 17 ff., xlvi. 18.

to him, it still has come from God, and remains by right under His control.[6]

Even after the Exile, one great act of reparation seems to have been achieved by Nehemiah,[7] when by moral suasion he induced the wealthy to restore lands and houses to expropriated poorer brethren. The post-Exilic prophets[8] still breathe much of the old spirit: "The fast is worthless when the worshipper oppresses his labourers; the true fast is to loose the bonds of wickedness and let the oppressed go free, to feed the hungry, to house the outcast, and to clothe the naked" (Is. lviii. 3-8). And the witness of the Wisdom writings is to like effect,[9] notably in Job's picture of the righteous man (xxix., cf. xxxi.). Yet here the old prophetic insistence on the "justice" which goes to the root of social evils by enabling men to remain self-supporting, has already dwindled to praise of the "mercy," which tries to cope with the resulting distress. The latter is relative to the religious ideal of a society too individualistic to feel the divine discontent of the older prophecy, though it kept on turning out the extremes of need and superfluity. If a pious soul here and there prayed, like Agur (Prov. xxx. 8 f.), for the happy mean between poverty and riches, it was for its own spiritual welfare, and not as the condition of a like lot falling to others also, which is the moral principle and test of a true social order. "Under the abnormal conditions of foreign domination, religion had grown narrower and feebler, when it was forced back from the great national and human interests into an ecclesi-

[6] Ps. xxiv. 1; Job xli. 11.
[7] Nehemiah v.
[8] Dr. Bennett specifies, *e.g.*, Isaiah xxiv.-xxvii., lvi.-lxvi., Haggai, Zechariah, Malachi, Joel.
[9] Job, Proverbs, and Ecclesiastes in the Hebrew Canon, while the Apocrypha is here in full agreement.

astical habit of mind. . . . It became legal, fixed, monotonous, a thing by itself. . . . The prophetic voice was hushed and the prophetic fire died out."[10] Yet there is evidence even in the later post-Exilic Judaism that the old ideal of social righteousness remained for many in Israel the essential test of piety. Thus, in Malachi iii. 5, Jehovah warns, "I will come near to you in judgment"—the setting right of what is wrong—"against those that oppress the hireling in his wages, the widow, and the fatherless, and that turn aside the stranger from his right, and fear not me, saith the Lord of Hosts." Here we get the social ideal in the setting most characteristic of the last centuries of the nation's corporate life, viz. as projected into the future, the Messianic age, when by a great divine intervention in history God shall vindicate in the eyes of all His ideal of human society. This vindication is usually depicted as achieved through a personal representative of God. Marked by a spirit of "righteousness and lowliness"[11] —once the sifting judgment is past—he shall do away with unjust and oppressive riches on the one hand, and dependent and hungry poverty on the other. This is exactly the note of the Messianic Hope in the *Magnificat*,[12] which is most significant in the present connexion as showing the true line of continuity from Old Testament religion to that of the New Testament. That line first emerges quite clearly in the great prophets, whose teaching as to property in a religious light has just been summarized. Its presence later on is made manifest in John the Baptist, whose strongly social message echoes in his replies to various classes as to a true repentance,[13] and whose spirit is emphatically

[10] W. Rauschenbusch, *Christianity and the Social Crisis* (pp. 27-32).
[11] Zech. ix. 9; Ps. xlv. 4; Test. of Judah, xxiv. 1; Psalms of Solomon, xvii., xviii.
[12] Luke i. 46-55. [13] Luke iii. 10-14.

sanctioned by Jesus Himself. It is a serious error to overlook this, and to imagine that He who claimed to fulfil "the Law and the Prophets" intended, by his new emphasis on the worth of even the humblest individual man or woman, to supersede, rather than intensify in its moral and religious sanctions, the teaching of the prophets as to social justice and equity.

II

We have dwelt thus long on the Old Testament phase of the Biblical idea of property, because from the nature of the case such an idea comes out more fully in the national story there unfolded than in the New Testament writings. In particular the teaching of the Founder of Christianity Himself, owing to its very genius and historical setting,[14] does not furnish much explicit reference to the subject. Yet it has a vital bearing on property in its religious and ethical aspects. The Kingdom of God, the reign of the Divine Will in and through men on earth, is a conception fundamentally social, and casts light upon the principles underlying every social institution. Hence just as Jesus confirms certain elements in Old Testament or Jewish religion, and supersedes others as untrue to its deeper tendency, as well as inadequate to the idea of God's Fatherhood which He made determinative of everything; so is it with property in the light of the same idea, even if He does not draw forth all that is here implied. Certainly that detachment of a man's heart from all material wealth which He so solemnly

[14] For our present purpose the historical and temporal perspective of Christ's message of "the Kingdom" as "at hand," is immaterial, save in so far as it helps to explain why the Gospel at first had nothing to say directly as to social reform. The social principles involved are intrinsic to the relations of men to God and to each other, whatever the scale of time or space to which they may be applied.

inculcates, and that love for one's neighbour as for one's self which He makes central in true religion, alike rebuke all self-assertive claims for "the rights of property," as if of absolute validity. The Old Testament doctrine that all a man has, whether of material or spiritual wealth, he holds as God's property and on trust for His uses, is assumed and enforced with new emphasis. "Mammon" or material wealth is entrusted to a man's stewardship in order to test whether he will be "faithful in that which is least," and so be fit to have entrusted to him "the true riches" of the soul. "But if ye have not been faithful in that which is Another's, who will give you that which is your own" —that is, those possessions which can be made one's own by the real appropriation of the spirit, to which they are akin. Further, as regards God's uses for what He entrusts to a man's stewardship, they are simply the service of human need for the love of God. This is tantamount to ministering to Christ, the Father's special representative—a truth set forth with special solemnity in the picture of the Final Judgment in Matthew xxv. 31-46. Persons, then, being God's one real concern, and their welfare being the end for which everything which can become human property exists and is held in trust from God, all life becomes a proving of loyalty and love to Him through loyal love to one's brother man.[15]

"Thou shalt love thy neighbour as thyself, or thou deniest both his sonship to God and thine own"; that is the message of the Gospel for all social relations. This of course includes implicitly economic relations, as affecting the well-being of men, and so the degree to which property may be held or increased, where the wealth of one lessens the opportunity of others. While

[15] Luke xvi. 10-12; cf. ix. 18.

accepting the institution of private property as a condition of social life, Christianity changed the whole perspective and emphasis of men's thoughts about it, and, what is still more difficult, their instinctive feelings towards it, by teaching the incomparable value of manhood. In the light of Christ's idea of humanity, viewed in and through the high and indeed divine possibilities latent even in those of least account with their fellows, property underwent a radical transvaluation. If the Sabbath, a divine institution for the training of human life, was yet "made for man," was relative to his well-being, and not *vice versa,* how much more so property? Property had no rights that were not relative to this great law of human life, that everything is to be judged as having the sanction of God only so far as it subserves, or at least does not stand in the way of, the Divine idea of man as a being created for spiritual likeness to Himself. To this end of ends for man all else must be treated but as means. Thus every institution of society is to be regarded as liable to modification as in practice it fails to work in such a way as to respect the sovereign rights of God in humanity, as His chief handiwork and property, and that for which, as potential sharer in His own nature and glory, all else was created.

These corollaries of the central Christian duty, love to God and to man in the light of God's interest in him —love with the mind and conscience as well as with the feelings—were no doubt felt at once, so morally obvious are they. Yet they would be felt in various degrees of urgency, as their practical bearings were patent or required more reflection in order to be realized. The Master Himself had not dealt directly with economic conditions but only with moral disposition as determining the use of these. All, then, that was at once

realized was the duty, or rather privilege, of "charity," in the restricted sense of that term, the divine obligation to share one's goods with those in actual need of bodily necessities, even to the point of impoverishing one's self in fulfilment of the law of Christ. "As ye would that men should do unto you, do ye also so unto them." There was no compulsion to sacrifice one's property at a stroke or to any given point; only, such conduct was highly honoured, as in the case of Barnabas. What did become a part of the ordinary Christian's ideal, and often of his practice, was the habit of treating his goods as not his very own, but as held in trust for the brethren in proportion to their need. "None said that aught of the things which he possessed was his own"; and in that sense "they had all things in common."

So says Acts;[16] and the idea is echoed in the early Catechism called *The Two Ways,* which adds, "For if we are fellow-sharers in that which is imperishable, how much more in things perishable?" Here we have the authentic note of primitive Christian faith; and indeed it is a timeless conviction of Christian faith worthy the name. For "whoso hath the world's goods, and beholdest his brother in need, and shutteth up his compassion from him, how doth the love of God abide in him?" (1 John iii. 17). The only point at which hesitation might arise, and where it did arise during the early centuries, as in later times, was as to the best form in which this spirit of boundless goodwill (the social equivalent of Christian love) should act in any given state of society—especially outside the special bonds and guarantees of actual Christian brotherhood. Here indeed there has been great variety in practice. But as to the essential Christian attitude there can be

[16] Acts iv. 32; cf. ii. 44 f.

no change without virtual repudiation of discipleship to Christ Himself, let alone primitive practice. Two things are axiomatic; first the incomparable value of persons as compared with property; and next the purely relative property-rights of any individual, not only as compared with God's absolute rights as Producer and Owner both of all things and of all persons, but also as compared with the paramount human or derivative rights of Society as representing the common weal. Of this, the individual's weal is only a dependent part, and should be limited by the rights of all others to the conditions of personal well-being.

The resulting practical principle, viz. the stewardship of property on behalf both of God and of Society, and the moral duty of fidelity in this relation as the condition of any correlative rights of private personal enjoyment, is too deeply embedded in Christ's teaching, notably in the parables, to need demonstration. But how thoroughly St. Paul, too, grasped this principle in all its range, applying it not only to material but also to spiritual possessions, may be seen from his searching words to certain at Corinth[17] who prided themselves on their mental superiority. "For who maketh thee to excel? And what hast thou that thou hast not received? But if thou didst receive it, why dost thou glory as if thou hadst not received it?" Everything is a gift of God's bounty, and calls for a grateful stewardship of love, the primary objects of which are the brethren, and beyond them all in need. As a manual of the next generation,[18] a sort of "Whole Duty of the Christian Man," puts it: "For the Father wills that to all there be given from His own gracious gifts." The real danger, in the case of the more earnest souls,

[17] 1 Cor. iv. 7.
[18] *The Teaching of the Apostles*, i. 5.

was a too indiscriminate charity to every applicant in the guise of need, particularly where the Jewish notion was adopted that alms had an atoning virtue (cf. iv. 6-7). But apart from abuses in both directions, in the motives of receiver and giver, self-sacrificing beneficence towards every form of need, inspired by an "enthusiasm of humanity," such as *Ecce Homo* describes as likely to be evoked by Christ's teaching and His own attitude to men, marked the Christianity of the early centuries and moulded its whole attitude to property.

Most typical is the terse statement in *The Preaching of Peter* a summary of Christian teaching probably belonging to the first half of the second century: "Rich is that man who pities many, and in imitation of God bestows from what he hath: for God giveth all things to all from His own creatures. Understand, then, ye rich, that ye are in duty bound to do service, having received more than ye yourselves need. Learn that to others is lacking that wherein you superabound. Be ashamed of holding fast what belongs to others. Imitate God's equity, and none shall be poor." This long remained a *locus classicus* for the Christian idea of property. Gregory of Nazianzus,[19] for instance, towards the end of the fourth century, cites its closing sentences, with the preface: "Let us not be bad stewards of what has been given to us." Similarly in an earnest call to truer living issued by a Christian prophet before the middle of the second century, we read: "Every man ought to be rescued from misfortune; for he that hath need and suffereth misfortune in his daily life is in great distress and necessity," and "suffers like torment with one in bonds." Such men, in fact,

[19] *Oration* xiv. In *Orat.* xvi. 18, he denounces as "most unjust of all," the man who keeps to himself "much property unexpectedly gained."

are often driven to desperation: hence, to know and not to rescue them is to be guilty of their blood.[20] Or again:[21] "Instead, then, of fields buy ye souls in distress, as one is able, and protect widows and orphans. . . . For to this end the Sovereign Master enriched you, that ye might perform these services for Him." For the Christian to do otherwise is to "repudiate," for the sake of earthly possessions, "the law of his own city," *i.e.* brotherly love, and follow "the law of the city" (the world), viz. selfishness. For himself he should seek to provide no more than a modest sufficiency.

The tone of the Apologists of the second century is the same. There is no thought of individual rights making a truly Christian use of property optional or voluntary, rather than obligatory, on the lines just indicated: for "wherein any can do good to his neighbours and does it not, he shall be reckoned alien to the Lord's love," *i.e.* the Christian law of life.[22]

Further, the ancient Church was very sensitive about morally doubtful trades,[23] and refused to receive for God's service, especially the relief of the poor and needy conceived of as God's special "altar" for acceptable sacrifices, anything made from such sources, or to accept as members those who persisted in such trades. Among forms of tainted money the Church reckoned usury, mainly having in mind the poorer class of borrower in time of distress,[24] who could ill afford to pay the high current rate of interest, and often fell

[20] *The Shepherd of Hermas*, Similitude X. iv. 2 f.

[21] Simil. I. 5-8; cf. Mandate viii. 10, and the parallels adduced in Harnack's note in his *Patrum Apost. Opera.*

[22] Irenaeus, *Frag.* 10, in Harvey's edition, ii. 477.

[23] The Apostolic *Didascalia*, iv. 5-6 (=Apost. Const. iv. 6), the *Canons of Hippolytus*, xi. ff. and parallel documents.

[24] Cf. Gregory Naz., *Oration* xvi. 18, "Farming not the land but the necessity of the needy."

as a debtor into the power of the lender. The lending of business capital on terms offering good chances of repayment was not in question. In the matter of usury, then, we get a good instance of the way in which the Christian conscience placed the use of property under the control of the law of justice that is also sympathy.

So far we have summarized the incidental teaching of the Early Church generally as to the duties of property. But there are a few writers who deal with the subject more particularly. The most careful handling of the subject of riches—primarily indeed in relation to their possessor's true welfare—from an Early Christian standpoint, is a tractate of Clement of Alexandria early in the third century. It is entitled "Who is the Rich Man that is saved?" in allusion to Christ's reply to the man who asked "What shall I do that I may inherit eternal life?"—"How hardly shall they that have riches enter into the kingdom of God." These words deeply impressed the Early Church. Indeed Clement found it needful, even after the lapse of nearly two centuries, to explain that they did not shut out rich men as such from eternal life, any more than they guaranteed it to poor men as such. Yet he does not disguise the grave difficulties which beset the rich man in the path of eternal life. He enters on the Christian race severely handicapped with the weight of earthly wealth; yet need he not give up the idea of entering at all, only he must submit to the strictest training of all under Christ the great trainer (ch. iii.). Everything depends on the motive, the attitude of will, "the stripping from the soul itself, and the disposition, the underlying passions, and the cutting out by the roots of things alien" (c. xii.). To judge the task impossible would be to make impossible also the principle of sharing one's goods with others. "For what shar-

ing would be left open to men if no one had anything?" This does not indeed quite cover the defense of riches as such. But it does tell against a literalistic and purely ascetic reading of Christ's teaching as to property, such as was evidently current in certain circles in Clement's day.

Accordingly the sum of the matter is this: "Wealth which benefits one's neighbours also is not to be discarded. For it is 'wealth' as being useful. It is, in fact, like some material or instrument, for good use by those who know how. . . . Such an instrument is riches also. Thou canst use it justly: to righteousness it is subservient. A man uses it unjustly: again a servant it is found of injustice. For its nature is to be a servant, but not to rule. . . . So let no one do away with possessions, but rather the passions of the soul such as do not permit the better use of property, in order that, becoming noble and good, he may be able to use nobly even these possessions." To those who have cast aside the passions of the soul which lead to abuse of wealth, Christ says, "Come, follow me," as the Way in the use of wealth also.

Such was Clement's view of Christian duty as to property, even when amounting to riches. It was not exactly the primitive Christian one, which resulted largely from expectation of a near end to the present order of things; but it had at its heart the same idea of property, whether material or spiritual, as a stewardship from God for the good of all within our reach (c. xvi.). "For he who holds possessions as God's gifts, both ministering from them to God the giver, unto men's salvation, and knowing that he possesses them for the brethren's sake rather than his own, . . . not being a slave of what he possesses and not carrying them about in his soul, but ever labouring

at some good and divine work . . . he is the man deemed blessed by the Lord and called poor in the spirit . . . not one who could not live if not rich" (c. xvi.).

Nay more, man's natural stewardship towards God is for Christians enhanced by the debt owed to Christ for laying down His life for them. "This (life) He demands of us in return on behalf of one another. But if we owe our lives to the brethren, . . . should we any longer hoard and shut up worldly things, those beggarly and alien and fleeting things?" (c. xxxvii.). Thus the right use of property is simply the corollary of love, in the peculiarly deep and real sense distinctive of the Christian Gospel. "Love buds into beneficence." Here Clement stands on the old and broad basis of the common Christian conscience, as we have described it, and as it utters itself in a Jewish Christian writing about Clement's own day:[25] Every fair deed shall the love of man teach you to do, even as hatred of men suggests ill-doing." In contrast to such "philanthropy" stands the self-seeking spirit of greed (*pleonexia*), which readily attaches to the pursuit of temporal gain and prompts to doubtful methods therein.

Clement can find no Christian warrant for the man who "goes on trying to increase without limit, ever on the outlook for more, with his head bent downwards" (c. xvii.). On the other hand, he goes beyond the primitive Christian mode of thought in a modern direction, when he observes that "it is impossible that one in want of the necessaries of life should not be harassed in mind and lack leisure for the better things, in trying to provide the wherewithal. How much more service-

[25] *The Epistle of Clement to James* (viii.-x.), prefixed to the *Clementine Homilies* but probably of earlier date.

able the opposite case, when having a competency he both himself escapes straits as to money and is able to aid deserving persons." The ideal lot is, in fact, that happy mean between riches and poverty for which the "wise man" of Proverbs (xxx. 8 f.) prayed, as best for the soul's welfare. Yet Clement does not feel called on to urge that this should be brought within the reach of all; that so every man might have the means of self-expression through the true use of some property of his own, rather than be dependent upon the charity of others. But this defect was common to ancient thought generally, while in Christianity "charity" was placed on a more ideal basis.

In Tertullian the primitive attitude to property is no less manifest than in his great Alexandrine contemporary. "We who mingle in mind and soul," says he,[26] "have no hesitation as to fellowship in property." And what is perhaps more striking, the same spirit animates Cyprian in the next generation, a period marked by not a few changes in Christian outlook. The two men differed a good deal in temperament; both were of legal training and spirit; and yet neither dreamt of property being held by Christians otherwise than in trust for God and His interests in humanity. Cyprian, who had himself set a signal example in the matter of yielding all to God's uses, discusses the duty of charity even to such an extent as to make a rich man actually a poor man, and meets current objections to such risks. His arguments may not all be sound, just as his religious theory of this duty is deeply coloured by legalism and the notion of meriting reward at God's hands; but in any case the essential idea of property as held on trust for God, the Giver of all goods, is there and influential. To act in the spirit of the Apostolic

[26] *Apology*, ch. 39.

Church in Acts is "by heavenly law to imitate the equality of God the Father" in the common gifts of nature, which "the whole human race" should "equally enjoy." "After this example of equality, he who as a possessor on earth shares his returns and fruits with the brotherhood, in being by his free bounties not only open-handed (*communis*) but also just, is an imitator of God the Father."[27]

In these brief sentences two ideas emerge which receive fuller expression in the next writer inviting notice on a scale similar to Clement, namely Lactantius, who wrote just before the change in the relations of Church and State under Constantine. These ideas are "equality" in the enjoyment of God's bounties, and the "justice" of the claim of need upon the property of those who have enough and to spare. To Lactantius in his *Divine Institutes* Justice is the very source of virtue; and its function as "the bond of Society" is set forth by means of a description of life in the Golden Age, when men were true to God's will in giving the earth for the common use of all, that none might lack. All this was disordered by Cupidity. Not only did men cease to share with others their superfluity, but they snatched at others' property, drawing everything to their private gain. This the strong further secured by unequal laws for the defence of their property thus won. Thus justice disappeared, with its offices of humaneness, equity, and pity, and was replaced by proud and swelling inequality (v. 5-6).

Such is Lactantius's analysis of the state of things prevalent in society about him, as it struck his Christian consciousness; and the moral roots of it, judged in the same light, he traces to "the desertion of Divine religion, which alone causes one man to hold another

[27] *De Opere et Eleemosynis*, 25.

dear, and to know that he is bound to him by the bond of brotherhood, in that God is one and the same Father to all." It was to restore "justice" as dutifulness (*pietas*) towards humanity in each and all, resting on like dutifulness to "the common Father of all," that Christ came. True justice, then, as inclusive of all virtues, has two primary forms. "Piety and equity (*aequitas*) are, as it were, its veins, for in these two sources the whole of justice is contained. Its fountain-head and origin is in the first of these, all its force and method (*ratio*) in the second. If, then, Piety is to know God, and the sum of this knowledge lies in practical worship, he of course is ignorant of justice who has not religious regard for God. For how can he know it in itself who is ignorant of its source?" This conception Lactantius further develops in a striking simile, according to which knowledge of God is to the organism of justice or true morality as the head to the body, the source of life and intelligence to all the virtues, if these are to exist in organic unity and vital energy (vi. 9).

The other part of Justice is Equity, that making one's self equal with others which Cicero calls "equability." For God, who both produces and breathes into men, has willed that all should be equal, that is, equally matched (*pares*); has imposed on all the same conditions of life; has begotten all for wisdom; has promised to all immortality. None is with Him a slave, none a master: for if to all the same is Father, by equal right we all are children. Wherefore neither the Romans nor the Greeks could possess justice, because they have had men of many unequal grades, from poor to rich, from humble to powerful. For where all are not equally matched there is not equity; and inequality itself excludes justice, the whole force of

which lies in this, that it makes equal those who have come by an equal lot to the condition of this life. The spirit which recognizes and acts on such equity between man and man, is called by Lactantius *humanitas,* which we may render "humaneness" or "the feeling of humanity." It is just what the author of *Ecce Homo* means by his "enthusiasm of humanity," when it exists in intimate union with the sense of the Divine origin and destiny of truly human nature. Such a union is also exactly what Lactantius has himself gathered from the Gospels, and he further uses it as a fruitful principle from which to deduce all social relations. Here is how he puts it. "I have said what is due to God. I will now say what is to be rendered to man; although this very thing which you render to man is rendered to God, because man is God's image. However the first duty of Justice is to be united to God, the second to man. But the former is called religion, the latter is named mercy of humaneness; which virtue is proper to just men and worshippers of God, because it alone contains the principle of social life." The chief bond then of men naturally, is humaneness; and he who has broken it, is to be deemed impious and a parricide. On account of this tie of relationship God teaches us never to do ill but always good, to afford aid to the oppressed and those in trouble, to bestow food on those that have not. For God, since He is Himself loyal (*pius*), willed man to be a social creature. Accordingly in the case of other men we should think of ourselves as in their place (vi. 10).

It is only such full and positive well-doing wherever need exists and one can help from one's own resources, and not mere abstinence from conscious injury, or aid given in exceptional crises, that satisfies "that true and genuine justice" which Cicero dreams

of, but "the concrete and clearly expressed likeness" of which he regards as beyond human reach. It is just such a concrete ideal of justice that has been revealed and brought within the reach of men, according to Lactantius, in the Gospel of Christ, who has given absolute value to humanity, as related to God, even in the most despised of men. Accordingly, "wherever a man's help is needed, there we should consider our duty to be in demand. But in what does the principle of justice consist more than in this, that what we afford to our friends through affection, that we should afford to strangers through humaneness? And this is after all afforded to God, to whom a just deed is the dearest of sacrifices."

"Perhaps some one will say: If I do all this, I shall have nothing." Lactantius replies that, after all, the precepts in question are not given to a single individual, "but to every community (*populus*) which is united in mind and holds together as one man. If alone thou art not sufficient for great works, work justice with all a true man's might. . . . Nor think that thou art now being advised to lessen or indeed exhaust thy estate, but to turn to better uses what thou would'st have spent on superfluities." In any case God will judge men by the laws of their own practice.

The exposition of Lactantius has been given thus fully, because his seems the most explicit statement bearing on the Christian idea of property and its duties to be found in the first four centuries. In its main features it may be taken as also fairly representative, especially of the Latin West, where the Stoic idea of "the law of nature," as expounded for instance by Cicero, remained widely influential. Thus, his principle, that to impart of one's larger means to those in need as an act of "humanity," due to those who share

with one's self a Divine destiny according to God's will, is not a deed of mere charity but of justice, is found half a century later in the Roman churchman known as "Ambrosiaster," when he says[28] that it is a matter of justice that a man keep not for himself alone what was intended by God for the equal good of all.

So far we have dealt only with the more positive aspect of the Early Christian idea of property, which while assuming certain rights of private ownership laid great stress upon the moral duties conditioning its exercise. God is recognized not only as the real Owner of all He has made and is constantly making and giving to mankind, but also as Father in His purpose touching its equitable use among His human family at large. But there were certain limitations under which these ideas for long operated, particularly the institution of slavery and the absence of a sound constructive theory of civil society, especially in its economic bearings.

These defects, which were part of the historical conditions amid which the early Church's lot was cast, were the harder for the Christian consciousness at once to transcend owing to two sets of causes affecting its own original outlook, the one temporary and accidental, the other intrinsic. The accidental hindrances were the expectation of the speedy end of the existing order by Divine intervention, and the fact that Christians long formed but a small minority within a spiritually alien social environment—a circumstance which restricted both freedom of action and reflective initiative. The intrinsic causes, on the other hand, flowed directly from the very genius of Christianity itself. "The Gospel" being "the glad tidings of benefits that pass not away," "it aims at raising the individual to a

[28] Commentary on 2 Cor. ix. 9.

standpoint far above the conflicts between earthly prosperity and earthly distress, between riches and poverty, lordship and service.''[29] Such ''holy indifference'' to all merely earthly conditions tended naturally, especially under the accidental conditions just specified, to concentrate Christian effort upon rooting the eternal boon of spiritual liberty in the souls of men, to the comparative neglect of social and economic conditions which had to do primarily with bodily comfort and welfare. Yet it is a mistake to suppose that Christians were ever indifferent to actual bodily distress or hardship in others, even if they believed these things could be overruled to their own good or to needed discipline. The Church's ideal in these matters was that of a modest sufficiency, gained by a man's own labour and enabling him to do deeds of mercy to others. But it had not yet enough leisure of soul or mind to direct its thought to the immense problem of the economic reconstruction of the Roman Empire. What it could do at once, that to a large extent it did. It created a fresh spirit, a new attitude of brotherhood and spiritual equality irrespective of all outward distinctions, based on the inherent sanctity of human personality, as heir to Divine sonship; and this was bound forthwith to make all relations new, and in the end—if maintained in its original purity of emphasis—to leaven every circle of thought and action, however ethically remote from such a dynamic centre. Nay more, it furnished within its own special sphere, the Christian community, an object-lesson of its inherent tendencies, on a voluntary basis, stimulated by a public opinion which revered such of its members as were devoted and original enough to carry out as individuals the full Christian ideal even in an alien social order. Thus

[29] Harnack, in *Essays on the Social Gospel*, 1907, p. 9.

even within the institution of slavery it produced a new moral atmosphere, especially where the new religious relation obtained on both sides; while it greatly encouraged the freeing of slaves on principle and not merely as a deed of liberality.

(*a*) In thinking of slavery, the greatest of abuses of property rights, perhaps the best approach to the Christian attitude under the Roman Empire is through Seneca, who was contemporary with the birth of Christianity. As distinct from Aristotle, who represents the ancient classical view that many men are by nature destined for slavery and have no right to freedom, Seneca held that since all men have at bottom—in what is noblest and most characteristic—essentially the same nature, this common humanity makes slavery a breach of natural law or right. Here the significant thing is that it is the religious element in Seneca's thought that makes all the difference. It is his truer idea of personality which leads him to his truer notion of human rights; and this is the outcome of his religious outlook, which thus lifts humanity above a naturalistic level of valuation and makes it something sacred, an end in and to itself. Here is the meeting ground of Seneca and Christianity, and it is characteristic of the religious view of life, socially as well as individually. The point at which they diverge, the less steady way in which Seneca carries out the thought, suggests the greater power of the Christian idea of God, based on a more vivid and sure sense of His personality as revealed in Jesus Christ.

But apart from this difference of moral dynamic in the teaching of Seneca and the early Christians, their practical attitude to slavery was much the same. They bade the individual rise to a sense of spiritual freedom in spite of outward bondage, rather than denounce the

institution as an altogether illegitimate form of property. The reason for this stopping short of the full application of the religious idea of persons was, in either case, expediency under actual conditions. This was specially clear and urgent for the Christian community, whose status, already precarious in the eye of Roman law, would have been rendered quite untenable, if colour were given to the suspicion that it meant social revolution on the part of slaves, *i.e.* the working class as a whole. Hence the official Christian policy[30] for the brief "present distress" was patient endurance of wrong "after the flesh" in the power of freedom "in the spirit." After all the principle of authority in society was of the Divine appointment,[31] and should not hastily be revolted against, even if identified with what, like slavery, clearly bore the mark of human sin, as selfishness and injustice. Where freedom was within reach in an orderly way, by a master's good will, let it be embraced. Such seems St. Paul's advice in 1 Cor. vii. 21, though the passage came to be read otherwise by many Church Fathers. Apart from this, Christians had a special reason for deeming direct efforts to abolish property in slaves as inexpedient, in their belief that the whole *status quo* of society was doomed to imminent radical change by the hand of God. Indeed it is in this light that we must regard their thought and practice as to all property during the period when the primitive view of "the Kingdom of God" prevailed. On the other hand, we must notice how later changes in the Christian idea of property went along with changes in this determinative conception, that of God's Kingdom, its nature, and the time and place relations of its realization. Such his-

[30] *E.g.* in the Epistle to Philemon, Col. iii. 22 ff., Eph. vi. 5 ff., and 1 Peter ii. 11-18, iii. 13-17, iv. 12-19.

[31] Rom. xiii. 1-7, 1 Pet. ii. 13 ff.

torical circumspection will help to save us from not a few current but grave errors touching both the spirit of Christianity and its view of property as a legal and economic institution.

(*b*) So, too, early Christian aloofness from society was not in the main due to "other-worldliness" of spirit in the sense of a dualistic attitude to life under material conditions, or a bias against normal bodily enjoyment of any kind. This is totally foreign to Christ's own attitude to Nature and human life. No doubt there was an "ascetic" element in His practice as determined by His special mission, and also in His teaching to others in so far as they were called to share the urgent task of preaching the Gospel of the Kingdom as at hand. Relative to such functions property was but a clog. Yet all were not called to "take up their Cross" of self-denial in the same way: there was a normal life of labour in gaining for one's self and others the daily bread which was in no way depreciated. Only superfluity is regarded as a clogging influence, as it grows to actual "wealth" and promotes the temper which "trusts in" riches and their pleasures. And this, broadly speaking, was also the attitude of primitive Christianity, so long as it was determined by the Biblical type of piety proper to its Palestinian home. It was only when it passed out into the Graeco-Roman world that another type of asceticism, foreign in origin, began subtly to blend with the older type of self-discipline with the positive intent of spiritual freedom, through simplicity of bodily desires, for service of God and man in love. But apart from this secondary development, which as time went on assumed immense dimensions and had far-reaching issues, the early Christian spirit towards material conditions was not "other-worldly"; for the scene of the

Kingdom of God was to be this earth, transformed indeed in such a way as to remove all sin and evil, yet the material home of a life in human society not essentially other than might be experienced here and now within the new Christian community, with its purified social order. The Lord's Prayer embodies this conception of the Kingdom unmistakably, and contains in the order and emphasis of its petitions, including that for daily bread, the principles of the new social idea. The claims of the Heavenly Father and His will are regulative from beginning to end. Over against such an ideal of human life the existing pagan order of society was alien in spirit; and as such it seemed beyond the hope of renovation by human efforts, however inspired, rather than by sudden Divine cataclysm, of which the fall of the hostile Jewish State seemed the first stage.

But this foreshortened perspective of the Kingdom's history on earth began slowly to recede into the background of the Christian consciousness, from the date of the publication of the Fourth Gospel, with its emphasis on "Eternal Life" as already present in its essential factors; and for a time Christians were sadly perplexed between the older and the newer outlook. In some circles the transition was quicker than in others. But the tendency was inevitable; and before the end of the third century the estimate of existing society, as embodying an order that might yet be leavened throughout, began to grow more positive, and was further enhanced by the adhesion of the imperial head of the State. Thus the sense of the alien nature of the social organism amidst which the Church lived and had its being tended to pass away during the fourth century, as the Empire became more and more Christian in profession, and paganism lost formal control

of society and its customs, while Christian bishops gained ever more influence and even legal authority in the world of affairs and of social custom. Filled with wonder and gratitude at this broad reversal of conditions, Christians neglected to criticize economic and social institutions closely in the light of the Gospel. No doubt the change tended on the whole to a more responsible and Christian use of property in various ways, particularly in the ameliorating of the servile lot, though slavery as such was not as a rule opposed on Christian principle. But on the whole a great chance was missed; and the social order, remaining at this crucial point unadjusted to the full spirit of the Gospel of Divine Fatherhood and Human Brotherhood, came to react adversely on Christian ideals of property generally. Broadly speaking, the idea of property as a social and economic institution really remained pagan and, so far as embodied in law, Roman in its spirit and presuppositions.

Nor is it hard to see how this should be so. The very genius of Christianity laid the main stress upon the spiritual or the intrinsic riches of the soul, rather than upon material conditions. Further, the historical conditions of the Church's life for nearly three centuries under the alien Empire, as already shown in connexion with slavery, were such as to prevent the natural extension of Christian thought from the primary to the secondary, yet influential, factors in man's concrete life in society. Accordingly when it would have become natural, with the changed relations of Church and State, for the Christian conscience to take upon itself fuller and wider responsibility for all social conditions affecting the welfare of men, including their mutual relations as equal before God and called to live as brothers in co-operative justice and love, it did

not rise to the height of its ethical ideal. There are no signs that the Church of the fourth century had or tended to create any new and constructive ideal of social well-being even for its own members, much less for the commonweal at large; while the economic aspects of the problem in any comprehensive sense lay quite below the horizon of its thought. That is, it simply shared the conventional ideas underlying the existing economic order, and the hand-to-mouth methods of dealing with its anomalies and evils.

Why was this? Why did not the Christian conscience concern itself more with such things, as it did (within the limits then restricting its action) with kindred evils in the early days of the Gospel? The answer must be, at bottom, that its idea of the Gospel itself had changed a good deal in emphasis. The old ethical passion, where it existed, had been diverted in the interval during which Christians had been largely shut out from direct influence upon social conditions, into largely different channels, especially those of self-salvation by ascetic retreat from the world. The spirit of moral initiative so characteristic of "faith" in the early personal sense, the faith which felt able and bound to "overcome the world," outside as well as inside its own bosom, was no longer prevalent; and so no fresh theory of what the social order should be made by Christian influence dawned on it in power, and no corresponding idea of property. Here, most of all, retreat from the normal social order on the part of the most zealous souls, in the interests of a monastic ideal[32] which meant despair of the leavening of society, was disastrous both in practice and in theory. It meant a virtual dualism between true religious life and duty,

[32] Though that ideal itself included communal ownership in place of private property, as is pointed out in the next Essay.

on the one hand, and civic and economic life on the other. The latter sphere was thus in principle left to go its own way according to its own secular and selfish laws, as a system outside the redemptive control of Christian motives and methods, yet a system in which Christians were involved and for the human issues of which they could not but be largely responsible. Such a secession of "the religious" *par excellence* could not but hinder the growth of a truly constructive theory of society, and of property as relative thereto; and could not but prevent the rise of a Christian public opinion adequate to originate and maintain any far-reaching economic reform. Finally, at the close of the fourth century, a definite theological doctrine, tending to support such practical pessimism touching the possibility of justice, in the full sense, in ordinary civic relations, added its weight to the negative scale.

But apart from the tendency of the Latin doctrine of Original Sin, as applied to civil society, to obscure the sacredness of its essential or ideal ends, the very idea of the petition "Thy kingdom come, Thy will be done on earth as it is in heaven," was already fading from current Christian thought and endeavour in any comprehensive social sense. Therewith the true Christian idea of property passed largely into abeyance; nor have conditions equally favourable to its re-emergence returned since then until now. Is it too much to hope that our own age, with its conscious effort to return, through past experience, and in an historic spirit which allows for the relative elements in primitive Christianity, to the essential ideals of the Gospel of Jesus Christ for mankind at large, may take a long step towards working out the bearings of those ideals on Property, as a large factor in the task of social betterment?

The note of religion is responsibility; and the genius of Christian religion, as we have seen, is a sense of the sovereign worth of human personality as compared with all else in life. This implies the duty of having all things in harmony with the interests of persons, not only in the disposal of wealth and the opportunities it affords, but also in the ways by which it is acquired, as these affect the persons employed as means to economic ends. Between competing human interests in this sphere God is the supreme arbiter, as He is also the real creator and owner of all wealth, whether material or mental; and into His ears enters the cry of them that are overreached in the co-operative business of utilizing His gifts. The unsolved problem, then, for Christian civilization in particular, is how to do justice as between persons in the use of the wealth which is now so adequate in the gross for the needs of all members of the social commonwealth. The answer to this problem turns largely on a thoughtfully just idea of Property and its social implications, matters on which further data emerge in the course of other essays in this volume.

V

THE THEORY OF PROPERTY IN MEDIAEVAL THEOLOGY

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SUMMARY

I. The conception of the New Testament and the early Fathers represents the principle of the claims of the Brotherhood. Permanence of the conception, which is represented by the organized charity of the Christian Church.

We are here concerned with the nature of the theory of property which lay behind this, as it was developed by the later Fathers and mediaeval writers.

II. Mediaeval theory founded mainly on that of the great Fathers.

The form of this derived primarily from the later philosophical theory of the ancient world.

The distinction between nature and convention.

The Fathers held that by nature all things are common, that private property is the result of avarice, but also a restraint upon it.

Private property is lawful, but the common right remains, and is represented by the obligation to maintain the needy.

Almsgiving is an action of justice, not merely of mercy.

Private property is the creation of the State, and belongs to positive law, and is limited by its utility.

Summary of the Patristic theory.

III. The Patristic principles furnish the substance of the mediaeval theory.

The Canonists held that private property belonged to the law of custom and institution, not to the law of nature.

By the law of nature all things are common, and this principle was represented in the primitive Church and in the theory of Plato.

Private property is the creation of the State.

St. Thomas Aquinas's treatment of the origin of property more complex.

Distinction between the right to acquire and distribute, and the right to use.

In the first sense private property is legitimate and necessary, in the second sense a man must hold it as for the common use.

The influence of Aristotle on St. Thomas.

Private property not an institution of the natural law, but not contrary to it.

St. Thomas's theory of the rights of property the same as that of the Fathers and the other mediaeval writers.

St. Peter Damian's phrase that the rich are *dispensatores*, not *possessores*.

The Canonists held that no man has a right to more than he needs, but recognize that some may need more than others.

St. Thomas's view is the same: almsgiving is an act of mercy in its intention, but is also a matter of obligation. He goes indeed so far as to maintain that in case of necessity a man may take what he needs.

In case of necessity all things are common.

IV. Such conceptions are in some ways far removed from ours.

We have transcended the sharp opposition between the natural and the conventional.

We recognize the organic process of the development of institutions, and the relation of private property to individuality. But the mediaeval conceptions are not unmeaning. We recognize the unity of life, and the truth of the conception of a common right.

This is the meaning of the principle of brotherhood, and is the true guide to social regulation and action.

V

THE THEORY OF PROPERTY IN MEDIAEVAL THEOLOGY

The last essay has drawn out the conception of the nature of property as it is presented in the Old and New Testaments and in the writings of the early Fathers. It is clear that their conception of the nature and rights of property was controlled by the principle of the claims of the Brotherhood, and expressed itself in the administration of help to those who were in need. This conception never died out in the Christian Church. It would, indeed, be impossible to deal with this subject completely without taking into account the history of charity, or almsgiving, in the Christian Church. In our day we are, no doubt, very conscious of the great difficulties which surround this subject, difficulties so great and serious that there are some who think that the time is rapidly approaching when this function of the organized Christian Society must be, at any rate in large measure, transferred to other organizations. But whatever may be the truth of this, we should fall into a complete misconception of our subject if we even for a moment forgot that the Church, from the days of the Apostles down to our own times, has looked upon the help and maintenance of the needy as among the first of the obligations of the religious life, and that this principle has been rep-

resented by an immense network of institutions, and by the constant practice of Christian people.

We are, however, now concerned primarily with the conception of the nature of property which has lain behind these habits and institutions; and this essay attempts very briefly to set out the substance of these principles as they were conceived in the Middle Ages.

The theory of the Middle Ages is founded upon the theory of property as it was set forth in the writings of the great Fathers from the fourth to the seventh century, and it is therefore to them that we must first turn our attention. As we shall presently see in more detail the theory of these Fathers represents not merely the influence of the New Testament and the sense of the Christian Brotherhood, but is related to the general principles of current philosophical theory in the later centuries of the ancient world. Indeed, it has not yet been sufficiently understood in how great a degree the intellectual conceptions of the Fathers and of the Middle Ages take their form and even their substance from the general thought of these centuries. The philosophical conceptions of the great Fathers have always their specifically Christian character; but the general education of these Fathers—and they belonged to what we may call the educated classes—furnished the forms into which they threw their distinctive conceptions, and, in the matter of social and political theory, much of the substance of their theory.

If we were to attempt to find a phrase which might represent the form of their theory, we might say that it lies in the distinction between nature and convention. In order to understand this distinction we must bear in mind that nature, in the later centuries of the ancient world, means primarily, not the perfection of a thing,

as it does in Aristotle, but the primitive or original form of a thing; while the phrase also usually conveys the suggestion that this primitive or original form has some continuing superiority over the conventional institution or custom which has grown out of it; or more accurately perhaps, that the natural represents something essential, which may be modified for practical purposes by the conventional, but cannot be wholly set aside. This will become clear as we consider the details of the theory of property.

The most arresting aspect of the patristic theory of property is well illustrated by such phrases as those of St. Ambrose, when he says that nature produced all things for the common use of all men, that nature produced the common right of property, but usurpation the private right; or again that God wished the earth to be the common possession of all men, to produce its fruits for all men, but avarice created the rights of property.[1] These phrases represent the normal standpoint of the later Fathers.[2]

What does this mean? At first sight it might seem to be an assertion of Communism, a denunciation of private property as a thing which is sinful and unlawful. But this is not what the Fathers mean. There can be little doubt that we find the source of these words of St. Ambrose in such a phrase as that of Cicero, "Sunt autem privata nulla natura,"[3] and in the Stoic tradition which is represented in one of Seneca's letters, where he describes the primitive life in which men lived together in peace and happiness, when there was no system of coercive government and no private property, and says that men passed out of

[1] St. Ambrose, *De officiis*, i. 28; *Comm. on Ps.* cxviii. 8. 22.
[2] Cf. Ambrosiaster, *Comm. on 2 Cor.* ix. 9; St. Gregory the Great, *Liber Regulae Pastoralis*, iii. 21.
[3] Cicero, *De officiis*, i. 7.

these primitive conditions as their first innocence disappeared, as they became avaricious and dissatisfied with the common enjoyment of the good things of the world, and desired to hold them as their private possessions.[4]

Here we have the quasi-philosophical theory from which the patristic conception is derived. When men were innocent there was no need for private property, or the other great conventional institutions of society; but as this innocence passed away, they found themselves compelled to organize society and to devise institutions which should regulate the ownership and use of the good things which men had once held in common. The institution of property thus represents both the fall of man from his primitive innocence, the greed and avarice which refused to recognize the common ownership of things, and also the method by which the blind greed of human nature may be controlled and regulated. It is this ambiguous origin of the institution which explains how the Fathers could hold that private property was not natural, that it grew out of men's sinful and vicious desires, and at the same time that it was a legitimate institution. For it must be clearly understood that they do maintain this. St. Augustine puts this very clearly in several passages of his writings, and he represents the general consent of the Fathers.[5]

This does not, however, mean that the principle that private property was a thing contrary to nature had a merely theoretical importance. On the contrary, it is, I think, clear that the Fathers adopted this quasi-philosophical theory so readily, not only because it

[4] Seneca, *Epistles*, xiv. 2.

[5] Cf. St. Augustine, *Contra Adimantum*, xx. 2; *De moribus Ecclesiae Catholicae*, i. 35; St. Ambrose, *Epist.* lxiii. 92; St. Hilary of Poitiers, *Comm. on Matt.* xix. 9; Salvian, *Ad Ecclesiam*, i. 7.

may have been the doctrine of the schools in which they were educated, but also because it fitted in very well with the traditions which they derived from the New Testament and the Early Church, the tradition that a man must help his brother who is in need. These Fathers are clear that though the institution of private property is lawful, yet the claims of all those who are in want continue to be valid. This principle is admirably represented in one of those passages from St. Ambrose's writings to which reference has already been made.

It was the will of God, he says, that the earth should be the common possession of all men, and should furnish its fruits to all, it was avarice which created the rights of property; it is therefore just that the man who claims for his private ownership that which was given to the human race in common, should at least distribute some of this to the poor.[6] It is very significant that St. Ambrose treats charity or almsgiving as an action of justice, and this conception is set out very clearly by other Christian writers. Ambrosiaster, for instance, as the previous essay has pointed out, deals with the matter in a very significant phrase when he says that this act of mercy, that is, almsgiving, is called justice, for God gave all things in common to all men; he is, therefore, a just man who does not retain for himself alone that which he knows was given to all: all things are God's, and God who gives them commands us to give of them to those who are in need; this is justice, that, as it is God who gives, a man should give again to him who needs.[7] And St. Gregory lends his great authority to this principle, for he says that, when we minister the necessaries of life to those who are in

[6] St. Ambrose, *Comm. on Ps.* cxviii. 8. 22.
[7] Ambrosiaster, *Comm. on* 2 *Cor.* ix. 9.

want, we render to them that which is their own, we do not give what is ours; we are discharging an obligation of justice rather than doing an act of mercy.[8]

This principle, that almsgiving is an act of justice rather than of mercy, is very significant, and forms a very important element in the patristic conception of the nature of property. It is true that the word justice was difficult to define then, as at other times; but we shall probably not be far wrong if we suppose that to the Fathers its meaning was very much the same as that which is expressed in the formal definition of Ulpian: "Justitia est constans et perpetua voluntas ju suum cuique tribuendi."[9] To act justly is to give a man that which belongs to him. When, therefore, the Fathers say that almsgiving is an act of justice, there is little doubt that they mean that the man who is in need has a legitimate right to claim for his need that which is to another man a superfluity. As we shall see, this conception became very important when the mediaeval writers attempted to reduce these principles to a systematic form.

One great Father, St. Augustine, has also left us a detailed account of the more immediate origin of property rights. Property in his view is the creation of the State. This is quite consistent with the more general conception of its origin in the conventional system of life which men's vices have made necessary. For the first and most general of these conventions of men, when they lost their original innocence, was the coercive State itself; and as it was its function, from the standpoint of the philosophical system in which St. Augustine was trained, to impose some order upon the chaos of the warring passions and desires of human nature, so especially was it the function of the State to

[8] St. Gregory the Great, *Lib. Reg. Post*, iii. 21. [9] *Digest*, i. I, 10.

decide between the conflicting claims of individuals to the possession and enjoyment of property.

St. Augustine holds that private property is the creation of the State and exists only in virtue of the protection of the State. To some Donatists who, not unnaturally, objected to the confiscation of their property in the interests of the Catholics, he replies by asking by what law they held their property, by human or divine law; and he answers the question himself, and says that it is only by human law that a man can say, "This is my house," or "This man is my slave." It is the law of the Emperor upon which is founded any right of property: it is idle therefore for the Donatists to say, "What have we to do with the Emperor?" If you take away the laws of the Emperor, who could say This is my house, or This is my slave?[10] In another place he very contemptuously sets aside the claim of the Donatists to hold as their property that which they had accumulated by their labours.[11] In other passages he maintains that the right of property is limited by the use to which it is put, a man who does not use his property rightly has no real or valid claim to it.[12] It is clear that St. Augustine regarded private property as being normally a creation, not of the divine, but of the positive law, and as subject to the determination of the State, and limited by the degree of its utility.

If we now attempt to put together these patristic principles with regard to property, we find that they represent a coherent system of thought, important in its practical significance, however inadequate it may seem when regarded from the standpoint of a strictly scientific examination of the nature of the institution.

These theories are intelligible only when brought

[10] St. Augustine, *Tract VI. in Joannis Evang.* 25.
[11] St. Augustine, *Epist.* xciii. 11.
[12] St. Augustine, *Epist.* cliii. 6; *Sermo*, l. 2.

into relation with that fundamental conception of the contrast between the natural and the conventional to which reference has already been made. This view is the opposite of that of Locke, that private property is an institution of natural law, and arises out of labour. To the Fathers the only natural condition is that of common ownership and individual use. The world was made for the common benefit of mankind, that all should receive from it what they require. They admit, however, that human nature being what it is, greedy, avaricious, and vicious, it is impossible for men to live normally under the condition of common ownership. This represents the more perfect way of life, and this principle was represented in the organization of the monastic life, as it gradually took shape. For mankind in general, some organization of ownership became necessary, and this was provided by the State and its laws, which have decided the conditions and limitations of ownership. Private property is therefore practically the creation of the State, and is defined, limited, and changed by the State.

While, however, the Fathers recognize the legal right of private property, as a suitable and necessary concession to human infirmity, a necessary check upon human vice, they are also clear that from the religious and moral standpoint the position of private property is somewhat different. The conventional organization of life is legitimate, but the natural law is not only primitive, but also remains in some sense supreme. Whatever conventional organization may be found necessary for the practical adjustment of human affairs, the ultimate nature of things still holds good. Private property is allowed, but only in order to avoid the danger of violence and confusion; and the institution cannot override the natural right of a man to obtain

what he needs from the abundance of that which the earth brings forth. This is what the Fathers mean when they call the maintenance of the needy an act of justice, not of mercy: for it is justice to give to a man that which is his own, and the needy have a moral right to what they require. We shall have to discuss the question further when we turn to the theory of property in the Canon Law and in the Schoolmen. In the meantime it is clear that the Fathers, while they develop the theory of property in relation to the philosophical views of the schools, do still under these terms maintain the principles which are characteristic of the New Testament. The new conditions of the Christian Empire had actually transformed, or perverted, the original conditions of the Christian brotherhood, but its principles remained the same.

When we now turn to the mediaeval theory of property, we find that the patristic principles furnish much of its form and substance. One of the most characteristic and representative phrases of the Middle Ages is that in which Gratian, the great compiler of the Canon Law in the twelfth century, illustrates the distinction between the law of nature and custom, or positive law, in relation to property. By the law of nature, he says, all things are common to all men: and this principle was observed by those Christians of whom it is written, in the Acts of the Apostles, that the multitude of those who believed were of one heart and soul. This principle had also been handed down by the philosophers, and thus in the writings of Plato the most just state was so ordered that no man had merely personal desires: it is only by the law of custom or of institution that this is mine and that is another's.[13]

[13] Gratian, *Decretum*, D. viii. Part I.

This does not mean, in Gratian any more than in the Fathers, that private property is not lawful, but only that it is an accommodation to the imperfect or vicious character of human nature. If men were perfectly good it would be unnecessary; and it is worth noticing that he looked upon the primitive Christian community as illustrating the ideal temper, and relates this to the conception that in the ideal State things might be so ordered that this private appropriation of things would be unnecessary. Actually private property is the creation of the State, and Gratian repeats the phrases of St. Augustine in which this is set out.[14]

These principles are related to, but modified in, the more developed treatment of the subject by St. Thomas Aquinas. He is anxious both to explain the origin and justification of private property, and to determine more clearly its limitations. In the *Summa Theologica* he discusses the question with characteristic fulness and precision, and sets out a distinction in the nature of property which he conceives to be fundamental; that is, the distinction between property regarded as a right to acquire and to distribute and property regarded as a right to use for one's self. In the first sense he recognizes property as legitimate and necessary, because men are more diligent in labouring for that which is to belong to themselves than for that which is to belong to all; because human affairs will be better ordered if each has his own particular work to do in procuring things; and because human life will thus be more peaceable, for there are constant quarrels among those who hold things in common. In the second sense he refuses to recognize a private right in property, for a man must hold those things which are

[14] Gratian, *Decretum*, D. viii. I.

his as for the common use, he must minister of what he has to the necessities of others.[15]

We shall probably be right in connecting his treatment of private property with his study of Aristotle, for the arguments in the *Summa* are closely related to his notes on the second book of the *Politics*.[16] St. Thomas is, indeed, so much influenced by Aristotle's conception of nature and the State that he is no longer ready to admit that the great institutions of society are contrary to natural law. To him the State is a natural institution, for man is by nature a political animal, and this principle extends to a great institution like private property. It is not, indeed, an institution of the natural law, but it is not contrary to it, it is a thing added to the natural law by human reason.[17]

St. Thomas Aquinas's modification of the patristic theory is important; how far it governed the later mediaeval conceptions it would be difficult to say. Speaking broadly, his adoption of the Aristotelian conception of nature and the State had little permanent influence, for the theory of the conventional nature of organized society was too firmly rooted to be shaken, even by his authority, and the patristic and Stoic principle continued to dominate political theory till the end of the eighteenth century.

When we turn to his conception of the rights of property we find little difference between the traditional principles of the Fathers and mediaeval writers in general and those of St. Thomas Aquinas. There is an interesting treatment of this topic in one of the smaller treatises of St. Peter Damian in the eleventh

[15] St. Thomas Aquinas, *Summa Theol.* 2, 2, Qu. 66, 2.
[16] St. Thomas Aquinas, Comm. on Aristotle's *Politics* ii. Lectio 4.
[17] St. Thomas Aquinas, *Summa Theol.* 2, 2, Qu. 66, 2.

century. Men who are rich, he says, are *dispensatores* rather than *possessores;* they should not reckon that which they have to be their own; they have not received their temporal goods merely to be consumed in their own use, but are to act as administrators of these goods.[18] This is no doubt related to the tradition represented by the Fathers in passages to which we have already referred, in which they maintain that it is just that those who receive from the Lord should use what they have for the common good.

The Fathers, as we have seen, held that almsgiving was an act of justice, not of mercy, because the rights of private property cannot alter the fact that God meant the earth to furnish its fruits for the maintenance of all men. The Canonists, too, set out very clearly the principle that no man has really the right to hold for himself more than he needs. Gratian cites, as from St. Ambrose, a passage denouncing as unjust and avaricious the man who consumes in luxury what might have supplied the needs of those who are in want, and maintaining that it is as great a crime to refuse the necessaries of life to those who are in want as it is to take from a man the things which are his. In another place he refers to a saying which he attributes to St. Jerome, that a man who keeps for himself more than he needs, is guilty of taking that which belongs to another.[19] These are far-reaching principles, but there are some qualifying phrases. In another place Gratian quotes a passage from St. Augustine, in which he urges that the needs of different people vary, that the rich are not to be required to use the same food as the poor, but may have such food as their infirmity has made necessary for them, while at

[18] St. Peter Damian, *Opusculum*, ix.
[19] Gratian, *Decr.* D. xlvii. 8. 3; D, xlii, Part I.

the same time they ought to lament the fact that they require this indulgence.[20]

It is no doubt in this tradition that we must look for the origin of that sharp distinction which, as we have already said, St. Thomas Aquinas makes between property as the right of distribution of things, and ownership regarded as an unlimited right to use for one's self. St. Thomas maintains that private property is lawful and not contrary to nature, but that private rights cannot override the common right of mankind to the necessaries of life. In discussing the nature of almsgiving he argues that it is an action which belongs to love (*Charitas*) and mercy in its spiritual character or intention, but it is also a matter of obligation (*in praecepto*); for temporal possessions are indeed private as regards ownership, but not as regards their use: as regards use, so far as they are superfluities, they belong to others who have need of them. He admits, however, that the distinction between the necessaries and the superfluities of life depends largely upon the conditions of a man's life.[21]

Thus his view of the nature of the rights of property is substantially the same as that of the Fathers and Canonists; but he draws from it a conclusion which Gratian does not set out, and which indeed he may have intended to condemn. Gratian, in discussing the question how far alms may be given from property unlawfully acquired, quotes a passage from St. Augustine which severely condemns the notion that a man may steal from rich and avaricious persons, and give what is stolen to the poor.[22] St. Thomas, on the contrary, maintains that as human law cannot over-

[20] Gratian, *Decr.* D. xli. 3.
[21] St. Thomas Aquinas, *Summa Theol.* 2, 2; Qu. 32, 1, 5, 6.
[22] Gratian, *Decr.* C. xiv. Q. 5, 3.

turn natural and Divine law, and as material, or inferior, things were made to supply men's necessities, if there is evident and urgent need, a man may legitimately take either openly or by stealth what he needs, and it is even legitimate in such cases that one man should take another man's property to help him who is in want. In the case of extreme necessity, St. Thomas says, all things are common.[23]

Such in outline are the conceptions of property held by the Christian Fathers and the mediaeval Canonists and Schoolmen. We are dealing with conceptions which are in some respects far removed from ours. In the modern world we have transcended the sharp opposition between the natural and the conventional, on which the patristic and canonical theory is based, we recognize the organic process of the development of institutions and ideas, and cannot be satisfied with any treatment of private property which looks upon it as a mere mechanical contrivance of the State for the correction of men's vices, but rather recognize in the development of the individual relation to things an aspect of the development of individuality itself.

The mediaeval conceptions are not, therefore, insignificant and unmeaning. We are coming to understand that the development of the idea of individuality is not to be conceived of as something opposed to the conception of the solidarity or unity of human life, but as something which is unmeaning and sterile, unless it is reconciled with it. The patristic and mediaeval conception of property as requiring the recognition of a common as well as an individual right, does really correspond with our experience and our principles, and we find in the interpretation of this,

[23] St. Thomas Aquinas, *Summa Theol.* 2, 2; Qu. 66, 7, and Q. 32, 7.

under the Christian terms of the brotherhood of men, the true guide to our regulation of life. To us also it is clear that it is impossible to assent to the notion that there are unrestricted and absolute rights in property. It is true that the existence of private property is based upon the recognition and protection of the State, and this is not arbitrary or unreasoned, for it is related to something which has its roots in the character and needs of human nature; but this recognition is and must be determined in its form and extent by the experience of what is socially and individually useful and beneficial. The Christian principle that a man holds his property not only for his own use, but as a trust for the good of the brotherhood, is not only valid in the abstract, but does in the long run remain the true guide to social regulation and action.

VI

THE INFLUENCE OF THE REFORMATION ON IDEAS CONCERNING WEALTH AND PROPERTY

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SUMMARY

Among the various embodiments of the influence of the Reformation, Puritanism is selected for special study in this essay, on the ground that the Puritan temper most powerfully influenced the business world. The conceptions of the rights and duties of property which prevailed among the early Puritans (*i.e.* among those who during the century 1560-1660 desired a national church more or less Presbyterian in character) are subjected to a somewhat detailed analysis. Richard Baxter, who has with some truth been described as the last of these Puritans, is taken as representative of the best traditions of his school, and in his *Christian Directory* the emphasis is found to fall on the sacred character of the institution of property and on the responsibilities of personal stewardship.

Incidentally, an attempt is made to question the close connection which is often assumed to exist between Puritanism and *laissez-faire*. This connection is shown not to be so direct and complete as is sometimes supposed, at least so far as the earlier phases of the movement are concerned. In Baxter, neither the guiding principle of the common good nor the duty of government control is ignored.

The developments of the Puritan tradition in the eighteenth century are next considered, together with the teachings which were underemphasised or altogether forgotten in the main body of Protestant thought, but were welcomed by small groups and Sectarian movements.

The essay concludes with a brief survey of the influence of the Evangelical Revival.

VI

THE INFLUENCE OF THE REFORMATION ON IDEAS CONCERNING WEALTH AND PROPERTY

In any attempt to describe the social teaching characteristic of the Reformation it would seem natural to start with the work of John Wyclif. Both in point of form and in point of time Wyclif stands closest to the great Scholastics, and the transition from Scholastic to Reformed attitudes of mind might best be studied in his writings. Yet even in tracing the influence of reforming principles in England—and it is to English thought that the present study is almost entirely confined—the work of John Wyclif may prove not to be the true starting-point. One general consideration is of importance here. Though the Reformation in England owed much to the Lollard movement, the great leaders from William Tyndale onwards were not, strictly speaking, Wyclif's followers. The great impetus towards reform came from the Continent, first from Luther and then from Calvin.[1] Particularly in regard to property, the teaching of Wyclif found but little echo in the literature of the Tudor period. Even the suppression of the monasteries, which might be considered as a direct appli-

[1] Compare D. Campbell, *The Puritan in Holland, England, and America*, where the interesting thesis is defended, that English history is not a record of steady progress, but of spasmodic response to foreign influence. In respect of the Reformation this is largely true.

cation of that teaching, was seldom defended by an appeal to the Oxford scholar. Moreover, Troeltsch is surely right in classing Lollardy with the many sectarian movements that marked the close of the Middle Ages.[2] Though in theory Wyclif demanded "a reform of Christendom, which should embrace the State and Society," yet when he sent forth poor priests who might not hold benefices, but who were to organize little groups on a voluntary basis, he practically abandoned the idea of the Church as an organization coextensive with civil society. Now Lutheran and Calvinist alike retained their hold on this latter idea, and similarly Anglicans and early Puritans, the English counterparts to Lutheran and Calvinist, agreed in striving for a Christian society in which State and Church should be coterminous, in opposition to the sects which conceived the Church as the separated company of the saints. It is among these sects that the closest analogies with Wyclif's doctrine of property are to be found. Consequently, any discussion of his positions may be postponed until the main stream of Reformation thought in England has been considered.

Puritanism is rightly regarded as the most representative interpretation of Protestant morality among English-speaking peoples. The great contribution which the Puritan temper made to the industrial development of Great Britain is now generally recognized.[3] In so far as our dominant ideas as to the

[2] See Troeltsch, *Die Soziallehren der christlichen Kirchen*, pp. 393-401. This masterly work came to my notice too late for this essay to derive full benefit from it.

[3] Compare the sketch of the influence of the Reformation in Marshall's *Principles of Economics*, 5th ed., pp. 742-44, which sets the matter in its true perspective. The whole subject has been handled more in detail in the writings of Max Weber and Troeltsch, and still more recently by Hermann Levy in his book *Economic Liberalism*.

rights and duties of property rest on a religious basis or retain a religious sanction, they seem to be linked up chiefly with Puritan teaching. This reason alone might suffice to justify the selection of Puritanism for preferential treatment in this chapter. But the choice is the less invidious inasmuch as there is no great gulf fixed between Anglican and Puritan, so far as moral instruction regarding wealth is concerned. Richard Baxter may be taken as representative of the early Puritans—the men who desired an established Church more or less modelled on Geneva. As a moralist, Baxter will be found to agree in the main with the English Reformers of the Tudor period, and also with such of his Anglican contemporaries as handled ethical questions. Consequently, in its early phases, Puritanism on this side embodies most of what is distinctive of reformed opinion in England; while in its later stage it coalesced with the sects, some of which emphasized elements of Christian teaching which the more conservative reform movement was apt to ignore. A study of Puritanism will therefore bring out most easily the nature of the influence which the Reformation exerted on ideas concerning wealth and property.

The net effect of the Puritan movement on the use of wealth has often been summed up as the assertion of greater individual liberty. Under Puritan influence, it is alleged, the Christian was set free from the imperfect but perceptible control of the Catholic Church, and left to take his own line in regard to his wealth with little advice and less discipline. Puritanism is the religious root of *laissez-faire*. Some sentences from Archdeacon Cunningham set forth a verdict of this kind. Speaking of the seventeenth century he says: "While there was a strong sense of the religious duty of insisting on hard and regular

work for the welfare, temporal and eternal, of the people themselves, there was a complete indifference to the need of laying down or enforcing any restrictions as to the employment of money. Capital was much needed in England and still more in Scotland for developing the resources of the country . . . freedom for the formation and investment of capital seemed to the thoughtful city men of the seventeenth century, who were mostly in sympathy with Puritanism, the best remedy for the existing social evils. They were eager to get rid of the restrictions imposed by the Pope's laws, which it was possible to bring up in ecclesiastical courts, as well as to be free from the efforts of the King's Council to bring home to the employing and mercantile classes their duty to the community. The agitation against the interference of the Bishops in civil affairs and the triumph of Puritanism swept away all traces of any restriction or guidance in the employment of money. In so far as a stricter ecclesiastical discipline was aimed at or introduced it had regard to recreation and to immorality of other kinds, but was at no pains to interfere to check the action of the capitalist or to protect the labourer. From the time when the rise of Puritanism paralysed the action of the Church, and prevented her from maintaining the influence she had habitually exerted, it has been plausible to say that Christian teaching appeared to be brought to bear on the side of the rich and against the poor.'"[4]

The measure of truth contained in this interesting verdict is not hard to discern. The Puritan divines followed Calvin in rejecting the Canon law against usury. Some of the early Reformers, like Hugh Lati-

[4] Tract on "The Moral Witness of the Church on the Investment of Money," pp. 25, 26.

mer and John Hooper, sided with Luther in his denunciation of usury and in his detestation of trade. Calvin and the Puritans found their chief support in the city men, and recognized interest as a legitimate source of gain. It is true that in this direction they broke down the fence of the Pope's laws. Perhaps it would be more true to say, they removed the remnants of a canonical hedge which already resembled a series of gaps. The prohibition of usury by the Canon law had become largely ineffective before the close of the Middle Ages. In the new commercial circumstances of the sixteenth and seventeenth centuries, its inherent unreasonableness was more evident. The inconsistency of the older position is exposed in the argument of Dr. W. Ames, a favourite moralist with Puritans, who says: "If a man buys a farm and takes a rent for it, it is held just. But what is the difference if he lends the money to another to buy the farm and gets that other to pay interest instead of rent?"[5] The Puritan only completed the inevitable revolt from the Canon law, by showing that the Canon law rested on a misapplication and a misunderstanding of the Mosaic law, and that the prohibition against usury had no ground in the gospel.[6] In addition to claiming the right to receive interest on capital, the Puritan spirit secured a further liberty in the use of capital through the opposition of Parliament to the monopolies set up by the early Stuarts. Since the leaders of that opposition were men of Puritan temper, and since one ostensible justification for such monopolies was the maintenance of the quality of the goods manufactured or sold, it is plausible to argue

[5] This passage is from Dr. Ames, *De Conscientia* (pub. 1631). With it compare Bullinger, *Decades* iii. p. 42.

[6] For this see Baxter's *Christian Directory*, Pt. IV. ch. xix. qu. xii.

that the Puritans were indifferent to the endeavour to maintain the quality of goods by the exercise of public authority.

"The agitation against the interference of Bishops in civil affairs" was not a distinctive feature of Puritanism. When Laud secured the appointment of Bishop Juxon to the office of Lord Treasurer, he incensed the nobility in general,[7] and established the one dogma on which Cavalier and Roundhead were agreed at the Restoration—the dogma which William Penn phrases thus: "Not many good days since ministers meddled so much in laymen's business."[8] Whether the intervention of the Bishops would have done much to keep moral considerations before merchants and manufacturers may be doubtful; but the final negative given to Laud's policy of strengthening the Church by securing civil power, closed a channel through which the Church might have exerted a direct pressure.

The course of events also tended to promote greater liberty for moneyed men, since, naturally enough, the disturbance of the Civil Wars destroyed the control of industry exercised by the Privy Council. A greater license having once been introduced, it was difficult to restore a system of supervision which had been working more or less in the preceding century.

Above and beyond all this, the Puritan movement is rightly associated with the growth of individual liberty. Many of its most distinguished leaders would have indignantly repudiated the name of democrat, and would have equally indignantly denounced the heresy of toleration. Yet Puritanism in its essence meant an increased sense of personal responsibility, and an assertion of the right of the conscience, under

7 See Clarendon, *History*, Book i. § 206.
8 Penn, *No Cross No Crown*, Pt. I. ch. xii. § 8. (*Works*, ii. p. 141.)

grace, to guide the individual apart from king or bishop. More particularly in its later stage when the Independents became its chief representatives, the direct influence of Puritanism made for greater liberty in religion and politics: it was inevitable that the men who won a greater recognition of self-direction in religion and in politics should also establish a fuller measure of economic freedom. The advocates of toleration became suspicious of Government interference in any direction. At the same time, the trend towards *laissez-faire* under the Commonwealth and the later Stuarts was at first accidental rather than designed; and if the action of the Church was paralysed after 1640, the division of Church influence, rather than the direct tendency of Puritan modes of thought, must be held to have occasioned the lowered efficiency of the Church in her moral witness on the use of wealth.[9]

Sweeping assertions to the effect that the rise of Puritanism removed all traces of restriction or guidance in the employment of money, and developed a public conscience which insisted on labour and sobriety for the poor, but made no attempt to check the action of the capitalist or to protect the labourer, are more

[9] Certain broader influences would fall to be considered in this connection, of which the chief would be the rationalist movement of thought so often described as the Illumination. Dr. Johannes Meyer in his pamphlet, *Die soziale Naturrecht in der christlichen Kirche* (p. 33 foll.), traces back to Grotius the tendency to derive social ideals from a law of nature or reason independent of the idea of God. This involved a separation between the sphere of religion and the sphere of natural law which sways the economic and political life of men. "If natural rights have nothing to do with religion, then religion has nothing to do with the social question." The Church lost control of business life because the eighteenth century developed a more secular way of regarding the whole subject. It must also be recognized that the Puritan distinction between ordinary moral virtue, "the ligament of human society," and grace, the essence of the religious life, suggested a similar separation of religion from economic life. For later Dissent, religion and business tend to belong to different worlds, which produces the lowered commercial morality of Defoe's writings. Or if business is part of religion, it concerns the individual, not the magistrate.

difficult to justify. Neither the actions and plans of the Commonwealth administration nor the published opinions of Puritan leaders suggest any such indifference to public control or moral guidance in regard to wealth.

In the first place, though the Puritan generally admitted the right to take interest, he still regarded usury or excessive interest as a sin, and as a punishable sin. If usury is not expressly mentioned by John Knox in the *Scotch Book of Discipline,* it is surely included in the phrase "oppressioun of the poore by exactionis, deceaving of thame in buying or selling be wrang met or measure,"[10] which appears in a list of sins to be strictly visited with ecclesiastical punishments. In any case, Thomas Cartwright, who might have been the John Knox of England, expressly cites usury as a case for admonition and exclusion from the Sacraments. "He that hath usurie proved against him, so that he lose his principal for taking above ten in the hundred,[11] yet shall he also, for committing so hainous offence against God and his churche, to the very ill example of others, not be allowed to the Sacraments, until he shewe himselfe repentaunt for the faulte and study thereby to satisfie the congregation so offended by him."[12] So far from putting no restriction on the use of money, Cartwright here accepts the principle of legal limitation of interest, and would inflict church censures in addition to civil penalties. Nor is he singular in this respect. The later Puritans did not depart from this earlier standard. Under Cromwell, in 1651, an Act was passed prohibiting any person to take above six pounds for loan of one hundred pounds by the year.

[10] Hume Brown, *John Knox,* ii. p. 144 n.

[11] The maximum rate of interest legally established in the reign of Elizabeth.

[12] *Puritan Manifestoes,* p. 120.

The Barebones Parliament devoted some attention to measures concerning bankruptcy, and Cromwell later put in force an ordinance for the relief of poor debtors. On the side of personal teaching, Puritan moralists are never tired of insisting on moderation in the terms on which money is lent. It is true that Baxter's counsels in his *Christian Directory* are somewhat vague, and he does not refer to any statutory limitation of interest, but he is clear that all usury is sinful when it is against either justice or charity. In particular, he holds that the Mosaic law was intended to protect the poor from oppressive contracts, and the Mosaic law is in effect binding still, being part of the Christian law of charity. This being so, usury is sinful, "when you lend for increase where charity obligeth you to lend freely: even as it is a sin to lend expecting your own again, when charity obligeth you to give it." In the further specification of cases of sinful usury, Baxter condemns the exaction of interest on business loans where the borrower cannot pay, and where the borrower is unable to secure a fair return for himself out of his enterprise, if he pay the full interest. From Baxter's point of view, interest could not be made the first charge upon industry. The same temper is apparent in the Puritan discussions of price. Baxter answers the question, "How shall the worth of a commodity be judged of?" in the following manner: "1. When the law setteth a rate upon any thing (as on bread and drink with us) it must be observed. 2. If you go to the market, the market price is much to be observed. 3. If it be an equal contract, with one that is not in want, you may estimate your goods as they cost you, or are worth to you, though it be above the common price; seeing the buyer is free to take or leave them. 4. But if that which you have to sell be extraordinarily desirable or worth

to some one person more than to you or another man, you must not make too great an advantage of his convenience or desire: but be glad that you can pleasure him, upon equal, fair and honest terms. 5. If there be a secret worth in your commodity which the market will take no notice of (as it is usual in a horse), it is lawful for you to take according to that true worth if you can get it. *But it is a false rule of them that think their commodity is worth as much as any one will give.*" Baxter is here amplifying Dr. Ames, who also in respect of necessaries holds that the price determined by public authority must be recognized as final. It is noteworthy, first that Baxter had no quarrel with the exercise of public authority to establish a fair price for necessaries, and second that he refused to sanction the sacrifice of moral consideration to the tender mercies of the forces of supply and demand. In both these positions, Baxter is thoroughly normal. Both Puritan and Anglican, in the seventeenth century, agreed on these points. In view of the first, we may conjecture that if the Puritans objected to the rule of Bishops exercised in the Star Chamber and the Court of High Commission, or if they disliked the control of the King's Council it was not because they were unwilling to see moral considerations enforced on moneyed men by public authority; it was rather that they denied to King and Bishop a power of control which they held belonged to Parliament. The Puritan attitude on a constitutional issue cannot be twisted into an endorsement of economic *laissez-faire*. Nor was there any great breach in the tradition of national control of industry, in the time of the Commonwealth.[13]

[13] Hermann Levy maintains the contrary view. He endorses Archdeacon Cunningham's verdict on Puritanism, and builds his case on the fact, demonstrated by Miss Leonard (in her *History of the English Poor Law*), that poor relief was best administered during the personal rule

The attitude of Puritanism towards monopolies, both in theory and practice, is likewise in line with

of Charles I., when the pressure of the Privy Council forced a common policy on the country, and insisted on the raising of local stocks to give work to the unemployed. After the confusion of the Civil War, these activities and this policy of the Privy Council were never fully resumed, and when in 1704 Sir Humphrey Mackworth introduced a Bill for employing the poor, it was practically killed by the vigorous pamphlet, "Giving Alms, no charity," from the pen of the Nonconformist Defoe. This abandonment of the early policy Levy attributes in the main to the anti-social tendency of Puritanism. The system set up by Charles I. was, under the Commonwealth, "not merely neglected, but it is hardly too much to say, abolished." The ruling classes' views of poverty had changed. "The victory of Puritanism brought with it the apotheosis of work," and want of work meant want of grace (see *Economic Liberalism*, ch. vi., esp. pp. 73, 77, and p. 86 *n.*).

I dissent almost entirely from this plausible presentation of the facts, on the following grounds:—

(1) The Puritans did not dislike the Poor Law policy of the Privy Council. Miss Leonard (*op. cit.* p. 297), referring to the Privy Council orders in the time of Charles I., says: "The substance of the orders, however, does not appear to have created opposition. Men of both sides sent in their reports to the Privy Council, and *more energetic measures to execute the Poor Law were taken in the Puritan counties of the east than in any other part of England.*"

(2) Whatever happened to administrative machinery during the Commonwealth, the general aim adopted by the Privy Council was not only not abandoned; it was expressly reaffirmed. "An Act for Advancing and Regulating the Trade of this Commonwealth" was passed in August 1650, and according to the preamble, passed "to the end that *ye poore people of this land may be set on work* and their Families preserved from Beggary and Ruine . . . and no occasion left either for Idleness or Poverty." The phrase "to set the poore on work" is the regular phrase for the relief of the unemployed, and it links the aim of the Commonwealth government with the best traditions of the Privy Council. If work was no longer provided officially, it was either because the Government lacked the energy and machinery for the purpose, or because the development of trade after the abolition of monopolies made such direct provision unnecessary. It was certainly not due to an anti-social tendency which denied any responsibility of the State for unemployment.

(3) Though Defoe is not altogether typical even of later Nonconformity, it is certainly true that Dissent tended to embrace an extreme form of Individualism. But the identification of the unemployed with the idle was not, even for Defoe, a theoretical deduction from the Puritan emphasis on work; it was grounded on what he actually saw of the demoralization of the people under the later Stuarts. The Puritan certainly took a harsh view of idleness, especially among the upper classes; but he did not confuse idleness and unemployment as Dr. Levy suggests, until the social conditions of the eighteenth century lent some colour to the confusion. It is a mistake to regard the Puritan doctrine of work as in itself a factor in changing Poor Law administration.

Baxter's repudiation of the principle of getting all you can for your goods.[14] The opposition to artificial monopolies was based on the perception of their economic wastefulness. Sir John Eliot takes his stand upon this principle. But in the case of natural monopolies, the Puritan declared it to be a sin for the individual to press to the full accidental or circumstantial advantages in bargaining; and they were ready to invoke and use the power of the State to suppress such monopoly gains and punish those who sought them. Thus, in the first year of the Commonwealth, the Government attorney was directed to prosecute a corn monopolist at Ipswich, "so that the poor people may see that care is taken of them in time of dearth." Later in the same year, a warrant was issued against Samuel Truelove of Wapping, and Mr. Bucknell, Shipmaster, "to attend the Council to answer as to a combination for raising the price of coals." This step was followed by the appointment of a committee "to consider how the price of coal for the poor may be brought down, to confer with the Lord Mayor and prepare an Act."[15] The general principle guiding such action is laid down in a memorable sentence in Cromwell's famous despatch to Parliament concerning Dunbar fight: "Be pleased to reform the abuses of all professions: and if there be any one that makes many poor to make a few rich, that suits not a Commonwealth."[16] Cromwell was probably thinking of lawyers in the first instance, but the Puritan did not

[14] It is interesting to observe that the protest against monopolies, combined with a protest against enclosures and bad judicial procedure, is already voiced in Martin Bucer's *De regno Christi*. Bucer, who taught in Cambridge in the time of Edward VI., may be regarded as the founder of English Calvinism. See Troeltsch, *op. cit.* p. 776 *n.*

[15] *State Papers, Domestic*, 1649.

[16] Carlyle's *Letters of Cromwell*, ed. Lomas, ii. p. 108.

intend any trade or profession to ignore the common good.[17]

To estimate aright the character of Reformed and Puritan teaching, it is necessary to consider some broader aspects of the subject. In developing a doctrine of property, the Reformers started from the Eighth Commandment.[18] "By this commandment, the proper owning of peculiar substance is lawfully ordained and firmly established. The Lord forbiddeth theft: therefore He ordaineth and confirmeth the proper owning of worldly riches. For what canst thou steal, if all things be common to all men? For thou hast stolen thine own and not another man's, if thou takest from another that which he hath. But God forbiddeth theft: and therefore, by the making of this law, He confirmeth the proper possession of peculiar goods." This representative statement from Bullinger may be supplemented by Baxter's discussion of the question, "Is it a sin for a man to steal in absolute necessity, when it is merely to save his life?" Baxter cites two opposing doctrines, first that of Dr. Ames who defends the principle "omnia fieri communia in

[17] The sensitiveness of the Puritan conscience on the subject of monopolies may be further illustrated from the Memoirs of William Kiffin, a wealthy Baptist merchant in the time of Charles II. In a chapter on his business adventures he is most anxious to remove the aspersion that he raised his estate by obtaining orders to bring in prohibited goods. He had never taken favours from Government! See Orme's *Life of Kiffin*, pp. 23, 24.

[18] Patristic and mediaeval writers usually begin their discussion of property with an appeal to the concept of natural law, and in the Middle Ages at least opinion varies as to whether ownership is a natural right or not. (See the preceding Essay.) The Reformers did not altogether lose sight of natural law, and like earlier Christian thinkers, they connected the Decalogue with natural law. But to them the Decalogue is the divine confirmation and interpretation of natural law. From this conviction they derived a readier popular appeal. The law of Nature was always something of an abstraction. In starting from the Decalogue, the Reformers based the institution of property on a direct spoken word of God.

extrema necessitate,"[19] and then that of the more rigorous legalists who regard the prohibition of theft as absolute, because no exception is hinted at in the Decalogue. Without accepting the latter view in its entirety, Baxter clearly leans towards it. He holds that "whensoever the preservation of the life of the taker is not in open probability like to be more serviceable to the common good, than the violation of the right of propriety will be hurtful, the taking of another man's goods is sinful, though it be only to save the taker's life." Baxter further maintains that "in ordinary cases, the saving of a man's life will not do so much good, as his stealing will do hurt." He thus appeals to the principle of the common good to negative the plea "a man must live," and also to modify or supplement the absolute right of ownership which many based on the Decalogue.

The early Reformers were led to insist on the right of private property the more earnestly, in order to clear their movement of the taint of Anabaptism. The story of Münster made these revolutionary Communists objects of fear. It was felt to be necessary to disavow their doctrine in the Elizabethan Articles of Religion; and accordingly Article 38 asserts that "the Riches and Goods of Christians are not common as touching the right, title, and possession of the same, as certain Anabaptists do falsely boast." The Puritans were obliged to clear themselves of the same suspicion. In the controversies of the time of Elizabeth, Whitgift and Hooker both attacked their opponents' position as tending to the anarchy of the Anabaptists. Later on, the Presbyterians and constitutional sectaries had to repudiate the extravagancies of the Levellers. Thus from similar motives English

[19] Cf. preceding Essay, p. 138.

Reformers, Anglican and Puritan alike, found it desirable to protest their attachment to the principle of private property. They were anxious not to be taken for social revolutionaries.

Another factor in determining the Reformers' attitude towards wealth, was the discrediting of voluntary poverty by the failure of the friar and the monk. The reaction from the conventional praise of poverty led the Reformer and the Puritan after him to insist on the blessing of wealth. Wealth and poverty come of God's gifts, and either is to be accepted as from Him. The seventeenth-century moralists do not ignore the spiritual and moral dangers of wealth. Indeed they are most anxious to direct the man of means in the employment of his money. But they do regard the possession of wealth as something ordained of God, and in consequence they take up a conservative attitude towards class distinctions and class standards of living. They do not anticipate a filling-in of the chasm between rich and poor, or even a closer approximation between the two sides of the chasm. It is assumed to be a natural and divine order that some are placed in a position to give alms and others in the necessity of receiving them. Differences in wealth are incidental to God's education of mankind. "Riches be chanceable unto us, but not unto God: for God knoweth when and to whom He will give them, or take them away again."[20] In this connection it is interesting to notice how Baxter, in the midst of many wise cautions against prodigality, yet reserves the expenditure necessary for the maintenance of class distinctions. The answer to the question, "What may be accounted prodigality in the costliness of apparel?" begins with the sentence, "Not that which is only for

[20] Latimer, i. 478, Parker Society.

a due distinction of superiors from inferiors, or which is needful to keep up the vulgar's reverence to magistrates."[21] When, a few pages later, Baxter discusses how far the rich may spend on themselves while the poor suffer want, he again rests on the validity of certain social distinctions, for "it must be confessed that some persons may be of so much worth and use to the commonwealth (as kings and magistrates) and some of so little that the maintaining of the honour and success of the former may be more necessary than the saving of the lives of the latter. But take heed lest pride or cruelty teach you to misunderstand this or abuse it for yourselves." In a sermon on the use of wealth, Bullinger had set forth the same principle. "One state of life and a greater port becometh a magistrate; when another countenance and a lower sail beseemeth a private person. But in these cases let every man consider what necessity requireth, not what lust and rioting will egg him unto. Let him think with himself, what is seemly and unseemly for one of his degree."[22]

Starting from the divine sanction attaching to private property, to differences in the possession of wealth, and to the resultant social order, the main stream of Protestant thought could not avoid the problem of the use of wealth. If men are not to surrender their wealth, how are they to make use of it? Here the Reformation stressed the religious worth of ordinary callings, and sought guidance in the conception of stewardship. Since wealth is God's gift, men are accountable to God for their use of it. They cannot

[21] Baxter, *Christian Directory*, Pt. IV. chap. xxi.

[22] Bullinger, *Decades*, iii. p. 55. The Canon law was much less considerate towards this kind of expenditure. See the preceding Essay, and the same writer's *Mediaeval Political Theory in the West*, vol. ii. p. 140 f.

evade their responsibility. They must face it. Differences of wealth and of social vocation are of God's designing, and men must live soberly and godly in that state of life to which it shall please God to call them. They must also remember always the strict and solemn account which must be rendered in the day of judgment.

However inadequate the idea of stewardship may be as a standard of social obligation, and however readily it may have degenerated into cant later on, it is to the credit of Puritanism that it succeeded in persuading many to take their stewardship seriously. In some instances it resulted in a morbid introspection, but more broadly it stimulated a healthy habit of self-examination, strengthened the power of self-control and the sense of personal responsibility. Men took more thorough stock of themselves, and the keeping of accounts became a religious duty—a not insignificant fact.

Baxter emphasizes the need of reflection in the disposal of ourselves and our resources. "Prudence is exceeding necessary in doing good, that you may discern good from evil, discerning the season and measure and manner and among divers duties, which must be preferred." And again, "in doing good prefer the good of many to the good of the few. Prefer a durable good that will extend to posterity, before a short and transitory good." This is obvious common sense enough, but it is part of the Puritan's contribution to progress that he sanctified common sense. The significance of Baxter's position may be seen when he deprecates a close dependence on the momentary inspiration of the individual conscience, and urges his readers to trust rather to general rules, and adds, "Present *prudence* and sincerity will do most." Puri-

tanism gave a religious impetus to what Sombart calls "Economic Rationalism," by making everything matter of conscience, and so of calculation.[23]

In keeping with the central conception of stewardship, great emphasis was laid on the duty of finding a useful employment for one's self. "Especially be sure that you live not out of a calling, that is, such a stated course of employment in which you may be best serviceable to God. Disability is indeed an irresistible impediment. Otherwise no man must either live idly or content hmself with doing some little charres as a recreation or on the by; but every one that is able, must be statedly and ordinarily employed in such work as is serviceable to God and the common good."[24] It was not only or chiefly in the case of the poor that Puritanism insisted on the religious duty of hard and regular work. In the choice of work, "*it is no sin but a duty,* to labour not only for labour sake, formally resting in the act done, but for that honest increase and provision which is the end of our labour; and therefore *to choose a gainful calling rather than another,* that we may be able to do good and relieve the poor."[25] Here too Baxter sets his seal to economic rationalism! The close connection between the Puritan ethic of prudence and the spirit of capitalism is undeniable. A further point of connection is best illustrated from one of Wesley's sermons. His first counsel about riches (which in spirit must be judged by its sequel "give all you can") is: "Gain all you can"; and under that head, he emphasizes the duty of improving the methods of industry. "Gain all you can, by common sense, by using in your business all the

[23] Hobson, *Evolution of Capitalism*, p. 22.
[24] Baxter, *Christian Directory*, Pt. I. chap. iii. grand direction x.
[25] Baxter, *Christian Directory*, Pt. IV. chap. xxi. For this motive in Early Christianity see Essay IV. p. 101.

understanding which God has given you. It is amazing to observe how few do this; how men run on in the same dull track with their forefathers. But whatever they do who know not God, this is no rule for you. It is a shame for a Christian not to improve upon *them*, in whatever he takes in hand. You should be continually learning from the experience of others, or from your own experience, reading and reflection, to do everything you have to do better to-day than you did yesterday. And see that you practise whatever you learn; that you make the best of all that is in your hand."[26] It would be difficult to imagine a more thorough endorsement of the temper which has made modern industry.

This insistence on orderly and enlightened industry in the making of money was naturally combined with the advocacy of carefulness in the spending of it. The austerity of the Puritan has been exaggerated. It is true he did not fully share Luther's faith in the righteousness of good living, Luther's breezy belief in the spiritual healthiness of banter and wine. Yet I do not think the true Puritan would have quarrelled with Bullinger's view that the necessity which is supplied by worldly goods does not exclude moderate pleasures. "For the Lord hath in no place forbidden mirth, joy and the sweet use of wealth, so far forth that nothing be done undecently, unthankfully or unrighteously."[27] It is sometimes forgotten that *L'Allegro* was written by a Puritan. Many who scorn Puritanism as strait-laced could hardly deny that the Puritan protests against some of the recreations of the sixteenth or seventeenth centuries were obvious in the interests of decency. In many instances the Puritan was not

[26] Wesley, *Sermon* 50, On the Use of Money.
[27] Bullinger, *Decades*, iii. p. 55.

so much a fanatical kill-joy as the champion of good taste. Thus it appears that the "sad" colours in dress associated with Puritans in the States, were not monotonous browns and greys, but just the sober shades which a sound aesthetic instinct preferred to the louder colours which were then fashionable.[28] For all that, there was a strong ascetic element in the Puritan movement. The Calvinist was more austere than the Lutheran, and the tendency deepened, for the Quaker was more austere than the Calvinist. Baxter laughs at the Quaker simplicity which rejects ribbons and buttons! And beyond a doubt, when the life-blood of Puritanism poured into the veins of the struggling Nonconformist bodies, there was a narrowing just on this side. The cleft made in English Christianity at the Restoration, by the Act of Uniformity, brought it about that to the heirs of Puritanism certain pleasures seemed irretrievably sinful just because they were characteristic of those classes of society whose worldliness was most apparent to Nonconformist eyes, and with whom Nonconformists came but little into sympathetic contact. Still even the original Puritan movement pruned men's expenditure severely. If it never meant to remove simple pleasures (particularly the pleasures of home, which it manifestly deepened), and if at times it even left the human heart inadequately warned of the snare of creature comforts, at least it cut off careless, luxurious, and dissipating outlay. The Puritan was compelled to think about the way he spent his money, and he was led to seek quieter pleasures and to purchase more enduring objects of delight than the conventional standards of his day suggested. Yet here too we can trace how religion nourished, if it did not originate, the outlook characteristic of capitalism.

[28] See Maurice Low, *The American People.*

Karl Marx says somewhere that "the capitalist brands all consumption as a sin against his function." He would have uttered a simpler and profounder truth if he had omitted the last three words. Indeed the three words in question are only part of the bad habit of regarding men always from their place in the process of production—the prejudice of supposing men's character to be determined by their economic function, which forms the mainstay of Marxian philosophy. The truth surely is that the capitalist class was largely created by men who branded all careless consumption as a sin. The Puritan conception of stewardship, and the Puritan condemnation of worldly living, will be found to have contributed more to the morale of capitalism than either the love of gain or any conscious adaptation of a class to their place in the productive process.

Before concluding this brief survey, it is necessary to devote a few lines to two other points, viz., the denunciation of oppressive methods of making money, and the obligation to charity and good works. There is nothing very novel in Baxter's treatment of these topics. He has much to say of the relation of landlord and tenant—not because he has the Puritan bias in favour of traders, but because he knew more about this than about industrial employment. He warns men against imposing oppressive rents, against oppressing labourers by withholding wages, and against imposing oppressive conditions of labour, especially conditions which render men unfit for or careless of their religious duties. Indeed it may safely be assumed that Christian opinion generally in the seventeenth century would have endorsed the principle of the Trades-Boards Act. That principle is stated in so many words by Jeremy Taylor when he accepts as fair price "that

which is established in the fame and common accounts of the wisest and most merciful men, skilled in that manufacture or commodity."[29] If the Puritan did not take adequate steps to protect labour legally, and if he trusted too much to the good-nature of landlord and employer, he was by no means indifferent to moral considerations in relation to wages and conditions of employment.

On the side of charitable activities and good works, the Reformers were concerned to urge their necessity and importance, without admitting their merit. Yet perhaps the traditional doctrine of the merit of good works still colours in a measure Protestant discussions of charity. The following are the motives to charity on which Baxter lays stress. Doing good doth make us most like to God: consequently it is an honourable employment; it makes us pleasing and amiable to God, and profitable to men, not only to others, but also to ourselves, for we are members one of another. There is, moreover, a singular delight in doing good, and good works are a comfortable evidence that faith is sincere. We owe so much to God that it doubles our obligation to do good to others. Then we are dependent on others and we should recognize the unity of the body social. Good works are much to the honour of religion, are often commended in the Scripture, and are the standard by which God will judge us. Baxter's catalogue of desirable works of charity is also of interest. He puts first, with an insight beyond his age, the work of advancing the conversion of the heathen. The promotion of church unity, and of a well-educated ministry at home, is urged as next in importance. After these he mentions the establishing of free schools in populous and ignorant places, the providing of

[29] *Holy Living*, chap. iii. sec. 3, par. 4.

higher education for those who are worth it but too poor to command it, the distribution of sound religious literature among the poor, apprenticing poor children wisely, relieving the necessities of the ejected ministers, advancing small stocks to set up suitable young tradesmen, the remission of rent by landlords to encourage their tenants to learn catechisms, and finally general poor relief. Not only in this section but throughout Baxter lays great stress on the service of the State and on the necessity of studying public utility.

The Puritan position may be summed up as follows: Private property rests on the Decalogue, and the right of this institution possesses an inviolable and divine sanction. Differences in wealth and in social status are of God's ordering, and belong to the permanent structure of society. Riches, being God's gift, are in their nature a blessing, and are not lightly to be abandoned by the individual, though they bring grave temptations and dangers with them. Since riches are God's gift, no man is absolute owner: all men are God's stewards and must render an account of their stewardship. Economic wastefulness is therefore necessarily sinful. Men must make the most of themselves and their resources. No one has any right to be idle or careless. It is likewise a duty to use and spend money profitably, not wasting it in dicing and worldly pleasures of that kind. In making money, a man must beware of oppression: in spending it, he must seek for works of lasting utility to mankind and the Commonwealth. It is sinful for any one to press to the full the economic and social advantages of his position, and it is the recognized duty of the public authority to fix a fair price for necessaries and to restrain monopolists. A rightly organized Christian Church would

enforce moral considerations on the owners of wealth by withholding the sacrament from heinous offenders.

The position, so outlined, is not, of course, peculiarly Puritan. An examination of the writings of Jeremy Taylor, or of such a treatise as *The Whole Duty of Man,* would have provided equally satisfactory illustrations of the main points. Jeremy Taylor, continuing the great traditions of Hooker, emancipated himself from over-great reverence to the law of Moses. He realized that "amongst us there are or have been a good many Old Testament Divines, whose Doctrine and manner of talk and arguments and practices have too much squinted towards Moses." This defect of Puritanism the great Anglicans avoided; but so far as the use of wealth was concerned, Puritan and Anglican were practically agreed as to their standards of Christian duty.

It would scarcely be fair to criticize the Puritan outlook because it failed to anticipate the social evils of the industrial revolution, though it would deserve censure if, by its concentration on individual duty, it rendered men blind to the necessity of common action, and perhaps a little callous towards the evils in question. Undoubtedly later Puritanism had this latter effect, though other factors of eighteenth-century life also co-operated to produce it. Many good men of the Puritan stock were, and perhaps are to-day, attached obstinately to the principle of *laissez-faire,* because a rooted trust in individual responsibility and self-help is part of their religious inheritance. In this, Puritanism displays the defects of its qualities. Such an over-emphasis compels us to ask what modifications have been made in the Puritan outlook by changing

social conditions, and what elements of Reformation teaching have been inadequately represented in it.

Clearly it was from the first open to any body of Christians who started from the broad principles of the Protestant ethic to advance beyond others by adhering to one or two definite applications of those principles. The advance which the Quaker claimed to make on the Puritan was largely of this character. While the Puritan condemned lavish expenditure in general, the Quaker protested against ribbons, buttons, and other particular superfluities. While Baxter is nicely balancing the honour of the magistrate against the life of the beggar, Fox is urging magistrates and others to lay aside furs and gold chains in order to relieve the necessitous who crowd the streets of London. While the Puritan is commanding honesty in bargaining, and is discussing cases of conscience in regard to the pricing and describing of goods, the Quaker is roundly denouncing all the petty falsehood of business, bidding men have done with all pretended politeness and act on the simple principle of "So say and so do."

There are many attempts, like that of the Quakers, to give a more rigorous and definite application to the common standpoint. Perhaps the chief direction in which later religious teachers modified the tradition of the seventeenth century is to be found in the demand for a greater asceticism on the part of the rich. It was felt on the one hand that the earlier moralists had underrated the danger of wealth and good living, and on the other hand, the problem of poverty became more urgent, especially towards the latter half of the eighteenth century. In consequence, some of the most conspicuous teachers of that age no longer display the Puritan tenderness towards class standards of com-

fort. Both William Law and John Wesley expected Christian men to reduce their personal expenditure to a minimum, almost to live as do the poor. Law's ideal Christian lady divides her fortune "betwixt herself and several other poor people, and she has only her part of relief in it. She thinks it the same folly to indulge herself in needless vain expenses, as to give to other people to spend in the same way. Therefore as she will not give a poor man money to go see a puppet show, neither will she allow herself any to spend in the same manner: *thinking it very proper to be as wise herself as she expects poor men should be.*" "Excepting her victuals, she never spent near ten pound a year upon herself. . . . She has but one rule that she observes in her dress, to be always clean and in the cheapest things."[30] Law's standard of living may be too severe: both Miranda and the poor might be allowed go see the puppet show sometimes! But at least Law does not concede to the rich an indulgence he denies to the poor. The distinctive thing is the assumption that the Christian must practise the self-denial he expects in the poor. John Wesley repeats Law's message. In his Journal he commends a gentleman who cut down his personal expenditure to twenty-eight pounds a year, so that he had nearly twenty pounds to return to God in the poor.[31] Wesley's own practice approximated to this standard. Of his three directions for the use of money, "Gain all you can," "Save all you can," "Give all you can," the third was the most important, supplying the motive and justification for the first two. Wesley urged his followers to imitate Quaker simplicity, while avoiding the snare of Quaker expensiveness. For by that time the prac-

[30] Law, *Serious Call*, chap. viii.
[31] The *Journal*, vol. iii. pp. 312-13, in Everyman's Library.

tice of the simple life had become a costly thing! "Let me see, before I die, a Methodist congregation full as plain dressed as a Quaker congregation. Only be more consistent with yourselves. Let your dress be *cheap* as well as plain: otherwise you do but trifle with God and me and your own souls. I pray, let there be no costly silks among you, how grave soever they may be."[32] Wesley was aware of the natural tendency of a rising income to enlarge men's ideas of what was due to themselves. He knew and denounced the plea that a larger revenue justifies increased expenditure. "Perhaps you say you can now *afford* the expense. This is the quintessence of nonsense. Who gave you this addition to your fortune, or (to speak properly) who *lent* it to you? To speak more properly still, who lodged it for a time in your hands as His stewards? . . . This *affording* to rob God is the very cant of hell."[33]

Yet Law and Wesley are still dominated by the central interest of Protestantism — the individual's relation to God. The disposal of property is primarily a question between the individual owner and God, though God's call has ever in view the wider common good. The effect of one's conduct on one's hope of salvation is the main consideration both in Law's *Serious Call* and in Wesley's *Sermons*. Wesley indeed condemns unhealthy and hazardous occupations, and also trades which produce social evil. He does not spare the liquor traffic. All who sell spirituous liquors "in the common way to any that will buy, are poisoners general. They murder His Majesty's subjects by wholesale, neither does their eye pity or spare. They drive them to hell, like sheep. . . . And what is their gain? Is it not the blood of these men?"[34] But,

[32] Sermon 88. [33] Sermon 126. [34] Sermon 50.

naturally enough, Wesley is concerned to emphasize the danger to the individual Christian of engaging in such trades. A man imperils his own salvation by selling liquor. This is still the uppermost thought. Wesley has something to say of dangerous trades—a subject on which Baxter had been practically silent, because its significance belongs to the eighteenth century. But the standpoint from which Wesley comes at the subject is governed by the same central interest as that which guides the *Christian Directory*. Perhaps, in consequence, Wesley "heralds the temperance agitation, but misses the deeper aspects of the problem."

When we turn our attention to the sects which skirmish on the outskirts of Puritanism—its predecessors, its critics and its allies—we are more certainly in a new atmosphere, an atmosphere with fresh and invigorating elements in it, which are inadequately represented in the main current of Protestant thought. Lollards, Anabaptists, Familists, Levellers, Fifth Monarchy men and, to some extent, Quakers, have at least this in common, that they stand for and keep alive an element of social hope for the kingdom of God on earth which does not appeal to the more conservative Puritan. Sometimes this hope becomes an apocalyptic fanaticism, as in the case of the Anabaptists at Münster or of the Fifth Monarchy men at the Restoration. But with all their extravagancies and impracticabilities these men preserve the belief in a new social order, the conviction that society is to be remodelled as a Christian brotherhood. The Puritan tended to postpone the New Jerusalem to another world, regarding this world as a school of probation that offers but limited possibilities of progress, or at the most he looked for such an approximation to the ideal as was

apparently possible within the lines of the existing social organization. Progress will lie in a further carrying out of the voluminous advice contained in the *Christian Directory*. But perhaps this would hardly build a very satisfactory Jerusalem "in England's green and pleasant land"! There is something wanting which is at least vaguely present in the followers of Major-General Harrison and John Lilburne, who felt that under the Commonwealth they were not yet at rest, had not yet enjoyed or seen enough to accomplish the ends of God. Surely "the bitter pangs and throbs [of the Civil War] would make way for that long expected birth of peace, freedom and happiness, both to the souls and bodies of the Lord's people: and although we do not see it fully brought forth, yet we do not despair, but in God's due time, it shall be so." [35] In different ways, the groups under discussion set out to begin forthwith the new way of living which they felt Christianity demanded. They very imperfectly realized the nature of their quest. The increase both in material resources and in economic knowledge has since rekindled part of their hope in a more sober form. But they deserve to be remembered for bearing witness to the revolutionary character of the Christian ideal of society.

The Puritan attitude, then, was marked by the absence of any emphatic social hope. Two other defects, or, to use a neutral word, omissions, call for comment. In the first place, the Puritan seldom attached much weight to the claim which the poor can make on the rich in virtue of the social character of all wealth. As we have seen, when Baxter enumerates motives for charity, he dwells on the likeness of the charitable man to God, on the pleasant emotional effects to one's self

[35] Simpkinson, *Major-General Harrison*, p. 177.

of charitable action, on the assurance to faith and so on. He does indeed touch on our social interdependence, but he has no clear perception and certainly no clear statement of any indebtedness of the rich to the poor. Among the great English Reformers, Hugh Latimer, so far as I know, stands almost alone in recognizing this truth. If he is not solitary in recognizing the truth itself, the quaint way in which he establishes it must, I think, be peculiar to him! While denying that the poor man has any right to take money away from the rich man, he says, in his fifth sermon on the Lord's Prayer: "But yet the poor man hath title to the rich man's goods: so that the rich man ought to let the poor man have part of his riches to help and to comfort him withal." Latimer proceeds to drive this home in the following quaint argument. "But here I must ask you rich men a question. How chanceth it you have your riches? 'We have them of God,' you will say. But by what means have you them? 'By prayer,' you will say. 'We pray for them unto God and He giveth us the same.' But I pray you tell me, what do other men which are not rich? Pray they not as well as you do? 'Yes,' you must say; for you cannot deny it. Then it appeareth that you have your riches not through your own prayers only, but other men help you to pray for them: for they say as well, 'Our Father, give us this day our daily bread,' as you do: and peradventure they be better than you be and God heareth their prayer sooner than yours. And so it appeareth most manifestly that you obtain your riches of God, not only through your own prayer, but through other men's too: *other men help you to get them at God's hand.*"[36] The Levellers reinforced, or rather replaced Latimer's argument, by pointing out

[36] Latimer, *Sermons*, pp. 398, 399, Parker Society.

the debt of the rich to other forms of human labour than prayer. "If a man have no help from his neighbors, he shall never get an estate of hundreds and thousands a year. If other men help him to work, then are those riches his neighbors' as well as his: for they be the fruits of other men's labors as well as his own. But all rich men live at ease, feeding and clothing themselves by the labors of other men, not by their own, which is their shame and not their nobility: for it is a more blessed thing to give than to receive. But rich men receive all they have from the laborer's hand, and what they give, they give away other men's labors, not their own. Therefore they are not righteous actors in the Earth."[37] Latimer uses the indebtedness of the rich to enforce the obligation of charity, the Levellers to deny the moral worth of charity. In either case, we have here a line of thought which is little considered in the main stream of Reformation teaching.

Secondly, the Puritan did not press any strong moral criticism of ownership. He did not regard misuse as impairing a man's right to property. The teaching of Wyclif found no immediate echo in the Reformation. Wyclif claimed that ownership depended on a man's standing in grace. The sinful man would not truly own anything. As soon as a man fell into sin, his ownership became usurpation.[38] This was no abstract principle for Wyclif. He was prepared to enforce it legally. He would have justified the temporal power in taking away tithe from a church which misused it. His whole general argument leads up to this practical

[37] Berens, *The Digger Movement*, p. 173.

[38] A similar conception appears in the Canon Law. See Carlyle, *Mediaeval Political Theory in the West*, ii. p. 141. Wyclif's application of the principle to the Church was the revolutionary element in his teaching.

conclusion. However, it was in relation to the Church that he was prepared to apply his principle rigorously, as the Church, he held, was originally meant to be poor. Some of his followers went *further* and criticized lords temporal as well as lords ecclesiastical. As the mainspring of a legal system Wyclif's doctrine of property may seem fantastic; yet undeniably it is a healthy stimulant to the conscience. It would not be a mistake to urge it on the attention of the individual, after the manner of John Woolman in his *Word of Remembrance to the Rich.* In essentials, and yet I suppose in complete independence, this most loving of revolutionaries this late eighteenth-century Quaker, reproduces Wyclif's position, as is clear from such passages as these: "Though the poor occupy our estate by a bargain, to which they in their poor circumstances agree, and we may even ask less than a punctual fulfilling of their agreement, yet if our views are to lay up riches or to live in conformity to customs which have not their foundation in the truth, and our demands are such as require from them greater toil or application to business than is consistent with pure love, *we invade their rights as inhabitants of a world of which a good and gracious God is the proprietor, and under whom we are tenants.* As He who first founded the earth was then the true proprietor of it, so He still remains; and though He hath given it to the children of men, so that multitudes of people have had their sustenance from it while they continued here, yet He hath never alienated it, but His right is as good as at first: nor can any apply the increase of their possessions contrary to universal love, nor dispose of lands in a way which they know tends to exalt some by oppressing others, without being justly chargeable with usurpation." Wyclif and Woolman are at one in holding

that only a good use of property confers a moral right to it, and that this moral right is deeper than any legal right, is indeed the standard by which any legal right may be questioned or revised. The Puritan in effect did not go behind the legal right. He did not press the moral criticism of private ownership which reveals the offence against love so often and so deeply involved in it. Consequently the Puritan did not see, and those who follow the Puritan tradition closely do not often see what John Woolman saw; that "to labour for a perfect redemption from this spirit of oppression is the great business of the whole family of Christ Jesus in this world."

This essay must not close without some reference, however brief, to the influence of the Evangelical Revival. So far as the Evangelical attitude towards wealth is concerned, the term "revival" is strictly apposite. The whole movement tended to infuse a new spirit of absolute consecration into the old thought of stewardship. It viewed property not so much in the light of the Decalogue as in the far more searching light of the Gospel of the Cross, and of the sacred obligations it imposes on the Christian conscience. Thus Wilberforce is unsparing in his criticism of the average Christian who wishes to fence off the sphere of religion: "Religion can claim only a stated proportion of their thoughts, their time, their fortune and influence: and of these or perhaps of any of them if they make her anything of a liberal allowance, she may well be satisfied: the rest is now their own to do what they will with; they have paid their tithes—say rather their composition—the demands of the church are satisfied: and they may surely be permitted to enjoy what she has left without molestation or interference." [39]

[39] Wilberforce, *Practical View of Christianity* (1797), chap. iv. sec. 2.

He proceeds to note how the idea of possession as a trust from God fades from men's minds. This conception he proposes to revive.

This fuller consecration of wealth was demanded by the many causes which called for philanthropic effort. The Evangelicals whom Wilberforce and Shaftesbury led were alive to the social evils of their time, and eager to stem them chiefly by voluntary organization. In the numerous philanthropic societies of the nineteenth century, a vast outlet was discovered for the expenditure of wealth and energy. "Bibles, schools, missionaries, the circulation of evangelical books, and the training of evangelical clergy, the possession of well-attended pulpits, war through the press, and war in parliament against every form of injustice which either law or custom sanctioned,—such were the forces by which they hoped to extend the kingdom of light."[40] The many-sided character of the philanthropic appeal made Lord Shaftesbury conscious of the apathy of England, and of the condemnation for sins of omission to which harmless people of all classes were liable. This "innocent" world could not face the question, "Have you laboured for the physical and spiritual welfare of your fellow-sinners?"[41]

The great Evangelicals were not averse from State action, nor did they fall into the mistake of sharply separating the physical from the spiritual needs of men—a delusive antithesis which often haunts the speech and snares the thought of Evangelicals, though it is perhaps as often ignored by them in practice![42] But undoubtedly voluntary organizations, especially for the purpose of religious education, formed the out-

[40] Sir James Stephen, Essay on *The Clapham Sect.*
[41] See Shaftesbury's *Life* by Hodder, pop. ed., p. 526.
[42] See especially a striking quotation in Shaftesbury's *Life*, pp. 554-5.

standing feature of the Evangelical movement. One characteristic of this religious and philanthropic activity has an important bearing on our subject. It has been noted by Dr. T. C. Hall [43] that there was a democratic, a levelling tendency in Evangelicalism. "To be even tainted with Evangelicalism was in the early years certainly, to be socially suspicious. It meant knowing 'queer people' and going 'out of one's sphere in life,' as the romance literature of the period abundantly shows us." Evangelical philanthropy overleapt class-barriers, and paved the way for a more searching criticism of class-standards of living.

It will thus be apparent that Evangelicalism not only revived the Puritan tradition of stewardship, and insisted on the responsibility of wealth in view of the numberless calls for philanthropic effort, but also stimulated that practical sense of brotherhood between men of different classes by which all use of wealth should be judged and guided.

[43] In his essay on the Evangelical Revival in *Christ and Civilisation*, p. 385.

VII

PROPERTY AND PERSONALITY

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SUMMARY

THE prolonged vitality of the elemental definitions of property taken over from Stoical philosophers by Roman lawyers; passed on through scholastic tradition; to reappear in schemes of social contract by Hobbes and Rousseau. So long as this tradition held its ground, all existing legal enactments were limited by ideal of Natural Order. Private right of property could never make itself absolute. Existing law tested by its power to secure right; the claim of the poor made in the interests of justice and not of charity. The tradition was summed up in the phrase "Property a trust." Over against this, at the Reformation, the rise in value of individual conscience and freedom. Private judgment sacred in religion. Individual initiative invoked by new world of thought, imagination, and adventure. So, in the order of Nature, the individual was regarded as absolutely free and unchecked; only to be limited by contract. Thus, through Locke and Rousseau, the tradition of the Order of Nature reached the French Revolution in an exaggerated individualistic form.

Then again, the change and development of industry laid all the emphasis on the individual. Man free to put out his full force on his own account, released from external shackles. The result of this individualism was a tendency to push aside the tradition that private property was conditional and secondary, and to base it on absolute and primal right of individual to claim the fruit of his labours. The claim of others upon him is more and more rested on charity alone. So the fatal transition came about, which assumed the right of private property to be final and absolute. This reinforced by Hegel through teaching that personality requires private property for its full development; and again by British practical assumption that property is essential to full citizenship. The true citizen is a man with a stake in the country. Yet the resultant society, which grounds itself on the fundamental character of private property, and finds in ownership the spring of social virtues, has as a matter of fact so developed as to exclude the great mass of people from the possibilities of private ownership. Ownership of tools or trade by workers has been practically obliterated; and "the people" live on wages. That is, it has no permanent property of its own. In consequence, the workers are without self-direction, without assured

stability, and without independence, all of which are essential conditions for the development of individual character. Therefore individuals wither under a system governed by individualism.

Our problem is to correct this unhappy issue. It has been brought about largely by false logic of personality. Personality has been assumed to be isolated and self-contained. In reality, personality is never solitary; incapable of isolation; exists only in fellowship, through intercommunion of person with person. So if personality only can exist in a community, fellowship belongs to the inner essence of personality; and every rise in significance of personality intensifies the significance of society. The personality that acquires social rights is a personality which is collective and representative. So in holding private property, it acts as organ of Community. Thus, once again, private property is shown to be conditional and not absolute, for it means property privately held and administered in the name and interest of the community. Again, if personality is essentially collective, then it can develop through exercise of collective ownership. The community at large may become an owner; and each individual in the community will, as member of the community, exercise the rights and acquire the virtues of an owner. So property can be regarded as a trust administered by the whole community, or, if by the individual, then not by him in his own right, but in his organic, representative character, as identical, in interest and in will, with the society of which he is a member, and by virtue of which he exists as an individual. This ideal identification of individual and society only possible if God be the one supreme authority over both, Himself the only absolute justification of all rights of ownership.

VII

PROPERTY AND PERSONALITY

Looking back, after this prolonged Historical Review, it is impossible not to be struck by the insistent vitality of the elemental conceptions as to the nature and ground of property, which the Roman lawyers took over from the Stoic philosophy. From the day in which the familiar expression given to them by the writings of Cicero had made them the possession of every cultivated man, they have never ceased to work within the mind with which we determine man's natural right to possess what he can claim to be his own, and the degree and limits to which Society should enforce this claim. The particular philosophical theory by which the language was to be interpreted might drop out of the world's memory; but the language remained imbedded in law and custom, in formula and proverb; and, still, there was left on the corporate imagination the vague impression of a law of Nature which could be found within and behind all particular laws, and of a natural right which was the inalienable possession of every individual man. These ruling ideals governed the existence and justification of Property. They passed into the very structure of human thought through the Casuists and the Scholastics who did the work of thinking for the mediaeval world. They took a new lease of life in the schemes of Social Contract which held the intellectual field from Hobbes to Rousseau. They were often driven back out of the

arena of practical business by the industrial developments of the last three centuries, which took their own stormy way regardless of speculative theories about rights and duties; and had to confine themselves to the domain of academic and forensic disputation. But they were never dislodged. They could still make themselves felt at critical moments of legislative decision, and could still quicken into effective reality high-sounding parliamentary perorations.

Thus, however vague might be the meaning attached to the historic phrases, they always served to sustain in life a sense that any existent legal enactment on property had to justify itself at a higher bar. It was never, in itself, ultimate. Behind it and above it stood a supreme law grounded in some ideal natural order of things. Sin and evil might prohibit the perfect display of this high law. There might be necessities which justified recourse to lower methods and expediencies. But, nevertheless, some echo of this loftier code was the secret of all the authority claimed by the actual legalities enforced by Society upon its members. Something of the primal condition survived, which no after-work could wholly blot out.

There was, therefore, an ideal standard to be recognized by which all existing legislation must be judged. The force which a Society could rightly use to repress wrong-doing and to assert private rights was not unlimited. Man's outlook travelled beyond it, and his conscience took in ideal conditions which had a natural and inalienable authority. In face of all the violence of War and Conquest, and in defiance of all the fetters that servile lawyers might be induced to forge, it was a splendid achievement to have transmitted this invisible claim of all humanity to a right and a liberty of which no man-made law could ever dispossess it.

This tradition overhung the whole structural fabric of Society, and it applied, with special emphasis, to the subject which this book has in hand. Private property, according to this view of life, obviously belonged to the secondary, and not to the primal, condition of human affairs. In the state of our Innocence it would not be needed or authorized. All would have been in common. This is the constant refrain of the Fathers. It is true that, by the Christian Doctrine of the Fall, they managed to get a more impassable barrier between *then* and *now* than the earlier philosophy had defined. For them, the condition of Innocence was gone beyond recall; and the necessity for restraint, limitation, repression, coercion was far more precisely determined through their recognition of universal sin. In this way Christianity supplied a stronger ground for the existence of the State, and for the legislation of private property, than had been possible before. Still it remained that private property, however inevitable and justifiable under the condition of an evil world, was nevertheless only a social expedient, not an absolute right; and it was bound, therefore, to be subject to the possibilities of a higher expediency. It was justified, but only as the most available method of attaining the common good in view of present perils; and it has always to show that this, its proper end, is being attained.

This requirement led to two positions which could be supported by quotations from Fathers and Casuists.

(1) Since, as Cicero had long ago proved, Law exists to secure the Right, if it fail in this, its original purpose, it has lost its claim to be obeyed. Bad rulers and bad laws destroy their own authority. Wyclif had something behind him when he re-asserted this verdict. He could quote Augustine.

(2) But there was another position more widely held, and more effectual; and this was that the poor, in their need, were appealing not to charity but to justice. The owners of property were, after all, holding what was due to all; and in giving to those in necessity they were but giving them what was their own. Father after Father had laid this down, often with emphasis and passion. And the greatest of all the Schoolmen had endorsed it by his declaration that all which was over and above our practical wants was in debt to those who needed its help.

The result of such a tradition might be summed up in the historic phrase that all property was held in trust. Those who used it had to answer to God, as good stewards, for its use. There was no moral or legal possibility of standing on the bare claim of possession. The possession of private property was conditional, not absolute. And its public utility must be justified, and answered for, at the bar of divine judgment. This was the underlying assumption which has passed into our normal historical heritage, and can never again be wholly lost.

But, in the meantime, during the centuries which opened with the Renaissance, a vigorous intellectual development had been taking place, which partly obscured, and partly countered, this ancient tradition. Man had set himself to disclose and to discover the full significance of personality. He was himself, in his individual character, the seat and focus of all that could interest or affect him. He was no mere specimen of a type, no mere item in a class, no mere unit in a society. Type, class, society, must interpret and justify themselves to him directly, in his personal and private conscience. He is at the centre of his own life, not on the circumference of some one else's. He

knows himself, he answers for himself, he controls and directs himself—face to face with the God who is his God. So the outbreak of the Reformation had declared. The individual conscience, the private judgment, had shaken themselves free from external shackles. Luther had pitted his solitary soul against the weight of system and tradition. The emphasis was bound to be given to the sanctity of individual right, and to the inviolability of individual freedom. The claim triumphantly asserted in the domain of the spirit could not but react over the whole area of active life, wherever personality was at work. And it was at work everywhere. The earth had been laid bare to it; new horizons widened the range of its possibilities; new worlds awaited its conquest; its windows opened on to the foam of untravelled seas beyond which lay "faery lands forlorn." Life was for the adventurous, for the independent, for those who could launch out alone and tempt the perilous flood. Everything conspired to invoke into play the vigour and daring of individual initiative. A man was asked to fling behind him the worn-out familiar customs of social activity, on which lay already the dust of death, and to let himself go, out of sheer trust in his own soul, to discover what novel experiences might unfold their secrets under the conquering force of his own personal attack. Individuality came inevitably to the front. The dramatists laid hold of the theme by artistic instinct. They saw the poetic value of dynamic or even demonic personalities, impelled into solitary significance by the tragic irony of adverse circumstances. They loved to think of that infinite variability which gives to human character its bewildering fascination.

The day of individuality had come as long ago in the Hellas of Socrates and the Sophists. And social

theories were inevitably affected by its invading presence. To men of peaceful and timid rationality like Thomas Hobbes, it wore the form of menace. He shuddered at the thought of a condition of primitive nature in which he, and those of his kidney, would lie at the mercy of these exuberant, boisterous, aggressive personalities, all bent on self-assertion. Such a life was terrible to contemplate—it would be "short, brutish and nasty." Mankind must, perforce, buttress itself against this clash and crash of militant individualities by concerted action, by drawing together to create a community, which could come to its own rescue under the obligations of a social contract. So the mass of weaker men might be strong enough to hold their own against the overwhelming appetites of masterful individuals. Under such a contract, they might secure their right over private possessions.

Or again, as we have seen in the earlier essays, Locke and the School of English Rationalists gave an intensely individual turn to the natural rights with which man was endowed, and laid it down that a man might claim a right of possession over any material into which he had put his own individual labour. It was through this English philosopher that the ancient doctrine of a state of Nature as a natural law reached Rousseau; and it was in this individualistic form that it created the flaming watchword of the French Revolution.

It was true that Rousseau's own theory of social contract led him to an admirable organization of a Social Self, a "Moi Commun" into which the mere self-centred, self-seeking Ego of Nature passed by a baptism of the Spirit. The old self was gone, with its narrow individuality; and a new individuality had come into play, corporate and representative by its

inner character, embodying and focussing in itself the mind and will of the community, finding its own existence in identification with the universal desire. This is the true individual who can take up the duties of citizenship. He is moralized by his universalism. He lives in others, and they live in him. The right over private property which he possesses comes to him through this identification. It is by the will of the community that he can exercise freely a will of his own.

Here is a noble social philosophy. Only it depends for its authority on an historical contract by which men have bound themselves to die to their natural solitude of being. Yet they could never have come together to enter into such a contract unless they had already possessed the corporate and social character which the contract was invented to account for. That is the difficulty of all theories of that kind. The social contract presupposes the qualities which it is supposed to originate.

But, anyhow, this was not the side of Rousseau gospel on which the Revolution seized. It flared out with the bare news that Nature had made man free, and, yet, that he had made himself everywhere a slave. He could regain his true self only by throwing himself back upon his original and primal claim to Liberty, Equality, Fraternity. Here, again, the liberty phrases wore the air which had been characteristic of the Reformation. There might be qualifications to be made; but, still, the heart of the matter lay in the free right of the individual man to break with all authority imposed from without, and to go his own way, and be his own master. All men equally had this right to be themselves; and in exercising this equality of free development they will find their brotherhood with one another. Their natural right was the right to live, to

work out their own destiny, to find food enough and room enough, in reward for their own labours, on the broad bosom of a mother-earth which was full and fertile in response to the demands of her children. Society might have to collect its coercive or militant forces in order to assert the liberty of man against foreign foe or internal oppressor; and the Revolution was prepared to commit even extreme power to the State organization in emergencies. But still the dream, the vision of the Age of reason and freedom and benevolence, was one out of which State necessities had dropped, and every one was his own law and his own master, safe in his possessions, assured of his own goods, glad and at peace under his own vine and fig tree, fraternally interested in knowing and seeing that all his brothers had their own individual joy.

Yet, over all this social and theoretic emphasis laid on the reality of the individual at the Reformation and onwards, there still hovered the corrective and haunting memory of that authoritative tradition which went behind all institutional legalization of private property, and, from the standpoint of primitive humanity, refused to attribute to it any absolute value.[1] It was otherwise in the other departments of human affairs, which had already in the eighteenth century begun to assume the form which was to develop so amazing an expansion. Industry had undergone its own revolution; and, under its moral conditions, it gave free rein to this liberty which, from so many sides and for varied reasons, individuality had learned to claim. Here, in

[1] It could still shape our prayers. Cf. Prayer in Queen Elizabeth's Primer: "Thou, O Lord, providest enough for all men with Thy most liberal and bountiful hand. But wherever Thy gifts are, in respect of Thy goodness and free favour, made free unto all men, we (through our haughtiness and niggardliness and distrust) do make them private and peculiar. Correct Thou the things which our iniquity hath put out of order: let Thy goodness supply that which our niggardliness hath plucked away."

commerce, there was opportunity indeed for throwing off external and prescriptive obstacles, and for staking all your confidence on individual initiative. Here, indeed, each man counts simply for what he is, and for what he can make of himself. Here he has a right to put out his energy in any direction that he can make good, and to hold in his personal possession anything that he can win in the open market. Trade is open and free, and all may take their chance in it. What he can get, he has. He holds it by virtue of his own strength and courage and knowledge. In doing the best for himself, he is accumulating the general wealth. Let him go ahead, he needs no other authority than his own superior skill to justify his grip on his own winnings.

This was the judgment of the new commercial conscience. And as a logical result, it tended to treat the claim to hold private property as final. It gave no reason for going behind it. There were certain State necessities which must be provided for; and individuals, in return for police protection and public security and a secured opportunity for doing business, might rightly be taxed to supply their social needs. But it was the concern of the State to reduce these to the minimum by policies of peace, retrenchment, and reform; and so to leave the largest possible liberty to the private owner to do what he willed with his own. Or, again, it was seemly for those who were well favoured in their ventures to exhibit a high standard of public beneficence and to aid those less fortunate than themselves. It was right to rate very high the virtues of charity. But the very earnestness of the personal appeals made to the conscience of the rich on behalf of the poor was itself a witness to the absoluteness of their command over their property. It

depended wholly on their goodwill whether they would respond, and the appeal to their generosity could never rise above the level of an emotional motive.

This appeal to charity, whenever it is greatly in evidence, is a sure signal that things have got wrong. It always means that the individual right is treated as absolute in itself, and has escaped out of its proper subordination to the demands of justice. The stress on the duty of beneficence and almsgiving, which Mr. Wood notes as so emphatic in Puritan addresses and manuals, is rather an ominous sign. The earlier theology laid the like stress to a somewhat dangerous extent; but, then, it grounded its pleas for charity always on the supreme justice which claimed the gift as a debt. But the idea of the *debt* faded wholly away out of the industrial world of the nineteenth century. It had forgotten that there was any question as to the right of private property to exist, or as to the conditions of its origin. It had ceased to doubt its ultimate value. It had its origin, plainly enough, in the exertions and the capacity of the individual man who earned it or made it. His right to it was to be found in his right to be himself. What more could you want?

It is this intellectual passage from the conception of private property as secondary and contingent to the conception of it as ultimate and absolute, which has caused all the trouble. And this passage was made, almost insensibly, through the intense realization of the value to be set on the liberty of the individual to live his own life.

From another side, again, the position reached under the influence of practical commercialism, with its emphasis on the freedom of the individual to put out his own powers to full exercise, was reinforced by the higher Idealism of Germany. Hegel saw in private

property the full opportunity for the development of the true ideal individual to which all his logic had led him. Through ownership, personality realized its power of self-direction and self-control. Personality is trained, through the discipline of property, to make its own self-disclosure as a ruling and active agent in the world of affairs. It comes to itself, thus realizing its power to manipulate and govern and use and direct a permanent stock of effective force. Its own actuality is revealed to it through this identification of itself with the real. It shows itself to be essentially an end, and not a means. It acquires a sense of self-centred sufficiency. It establishes its right to independence. It wins a footing of its own, a pivot for its action, by virtue of which it can assert itself as a unit of force in the correlated activities and services and functions of the organic community. It is moralized and spiritualized by being secured in this recognized position of self-dependent and authentic reality.

So the big German philosophy works out that intellectual justification of private property which the practical English man of business expresses by the phrase, "A man of property is one who has a stake in the country." He is a qualified citizen whose interests are bound up with the interests of the whole community. He has committed himself, he has taken his place, he has become a focus and seat and centre of civic obligation. He has a personality that counts in the sum of the whole. He has rights as well as obligations. He is a true ethical unit. For he owns property.

So we all say, and everybody cheers. Thus "personalty" nearly spells personality. Only the strange thing is that the very Society which, in theory, has so emphatically grounded itself on the fundamental basis of private property, and has found in the sense of

ownership the spring and source of these moral excellencies on which it builds its own security, nevertheless allows itself to develop in a direction which is constantly reducing the number of people who can have a chance of experiencing what ownership means. Our industrial organization has found it essential to its success to wipe out the multitude of small owners, who once found their place in our trade. It has stripped the agricultural labourer of all that gave him a hold on the land. The vast mass of workers in our towns have long ago ceased to have any right of possession over the tools or materials of their occupation. They have dropped to the position of pure wage-earners, and that means that they have no secure footing of their own, no self-dependent area on which to fall back, no reserved resources which are under their own control and direction. Their existence is never in their own hands; nor are they responsible for their own maintenance. The stability, the power to look before and after, the assured hold on reality, the embodiment of their own wills in a material fact, which we philosophically recognize to be the moral and spiritual value of private ownership,—all this is denied them. They enjoy no sense of background such as would endow their individual lives with a certain dignity. They exist on the surface; they cannot strike roots, and establish permanency. The forces on which their very being depends are wholly out of their ken or power. They are regulated by others, who are out of sight. They themselves live by the day or the week, and are liable to every sort of accidental or unanticipated displacement. It is just the moral discipline of responsible ownership which they are bound to lack. This is the class which our system of industry sets itself to create and use, both in town and country. Its work

is rested entirely on the wage, and the wage means the absence of ownership.

And not only so, but the permanent claim made for the right and value of private property is so used as to make the many the practical property of the few. Property is not valued for its use, but for its power, as Professor Hobhouse has shown. The owner does not claim what is his own for the sake of using it. For, indeed, he owns far more than he can ever dream of using. The unhappy multi-millionaire cannot consume, through his own efforts, more than £10,000 a year, as one of them dolefully confessed. If his income is over a million, then all this surplusage goes to enlarge his domination. What he does is to exercise power over others. He can prescribe for them what their life shall be; what opportunity they will have for gaining a livelihood; where they shall live, and under what conditions. He has thousands upon thousands dependent on him for their existence. He utilizes their labour, and turns it to efficient exercise and profit. His private property gives him the power by which others are deprived of their possession of themselves. Thus the great capitalist, by the exercise of his own right of ownership, limits and cancels the self-ownership which others might enjoy. Himself the great illustration of the capacities of private property, he is also, by that very fact, the great example of its destruction. By enlarging his own immense stake in the country, he creates a multitude of individual workers who have no permanent stake to speak of. The property which gives him such efficient power, does so by depriving others of the very power which he possesses—the power to be their own master and to control their own destiny. Thus it has come about that the Society which boasts of its reliance on the freedom

of individual self-development nevertheless allows only a limited proportion of its individual members to possess the freedom. It appeals to the moralizing influence of ownership; and then denies the possibilities of any real ownership to the main mass of its members.

Individualism, then, finds its worst opportunity in an individualistic society. The law of competition, working under our present capitalism, while offering scope and fulfilment to the very few, wrecks and undermines the individuality of the many. And this it does just because it gives to so very few the chance of embodying the permanent worth of the personality in any enduring right of possession. It leaves the vast multitude of workers to become mere items on the surface, without any secured future, without any sure grip on facts, without any stored reserve, without any established status. Personal value finds no public witness. Character has no firm pivot round which it can build up its fabric. The inner life misses its outer support. It obtains no substantial recognition; it cannot give public or visible evidence why it should be acknowledged and honoured. It has no pledge to proffer of its own permanence. It has no fixed centre round which associations and relations and obligations may coalesce. It lacks the basis out of which it can educate itself into structural coherence, or through which it can respond and react in counter-play to all the forces that tell upon it from without.

All this the human personality requires, if it is to discover its strength and to develop its capacities. All this it could gain out of the exercise of ownership, in a community of owners. All this it is bound to miss in a community in which real ownership is the exception, and only the few can attain to the full liberty and independence of self-possession.

By forcing Individualism, then, we have, somehow, evicted individualities. By over-assertion of the absolute right of the individual man to have what is his own, we have landed ourselves in a situation in which the majority of men are not their own masters, and have a minimum of what they can call their own. Obviously, our logic has gone wrong somehow.

Shall we try to see how the trouble began? And, reviewing the last three centuries of our social evolution, shall we not be justified in suspecting that it is our philosophy of personality which has been at fault?

We laid hold, at the Reformation and the Revolution, on the supreme value of personality; and we found the secret of this value to lie in the sanctity and freedom of the individual man. We isolated this core of individuality; and we attributed to it, in its isolation, all its high privileges and prerogatives, all its sacred rights and inveterate claims. The individual man justified himself. He constituted his own natural right to live, to grow, to put out his powers. He was the spring of his own liberty, and the owner of his own activity. He, in his solitary dignity of being, answered for himself to God alone. He owned no other lordship. To Him alone was he bound to give account of his stewardship over His goods.

But can an individuality ever be isolated? Was this not a false start? What is individuality? And where is it to be found? Can it appear, can it exist, except in a community of which it is the representative organ? The individual man draws all his significance out of the fact that he is the expression of some social body to which he belongs. He is a member of his race, of his nation; on that depends in fact his individual worth. This is why he counts. He is a sample of what his nationality means. Every claim that he makes for

himself can be made in pressing the same terms for others. He cannot give himself any value that he denies to others. As he rises into free self-assertion, so these others rise all round him with identical rights. He and they are created by the same act and under the same law. He can never be intelligible except in terms which include and involve others. Individuality, then, is really representative, is corporate, is social, by the very principle of its like. It can only be understood as the unit of a society.

And this only leads us down deeper into the root-conception of personality which finds expression in individuality. Personality lies in the relation of person to person. A personality is what it is only by virtue of its power to transcend itself and to enter into the life of another. It lives by interpenetration, by intercourse, by communion. Its power of life is love. There is no such thing as a solitary, isolated person. A self-contained personality is a contradiction in terms. What we mean by personality is a capacity for intercourse, a capacity for retaining self-identity by and through identification with others—a capacity for friendship, for communion, for fellowship. Hence the true logic of personality compels us to discover the man's personal worth in the inherent necessity of a society in which it is realized. Society is, simply, the expression of the social inter-communion of spirit with spirit which constitutes what we mean by personality. Fellowship and Individuality are correlative terms.

It is therefore impossible to emphasize the reality of personal existence and personal claims, or personal liberty, without in the very same breath asserting the emphatic reality of social obligation, the paramount authority of social order, the sanctity of social law.

Every rise in the value of the State involves a corresponding rise in the value of the individual that incorporates it. Every increase in the personal freedom witnesses to the supreme significance of the common life of which that liberty is the witness and the expression.

Personality, then, is always collective in basis. In every individual act and word it is putting out power which comes to it through its place in the community. The "moi" which asserts its free individuality is still the "moi commun" of Rousseau. It may legitimately claim the right to personal possession: but the claim so made will belong to it by virtue of its corporate and representative qualification; so that the individual right to own private property is an expression of the community's right to have and to hold its own, put out through the person of one of its members. It can never be an absolute right inherent in the man himself; for he, as a personality, is inseparable from the fellowship which constitutes his personal existence. He holds what he can call his own by virtue of his status inside the fellowship; and, if so, the justification of his private ownership must always be found in the welfare and the will of the community. He must be expressing the will of the State in having personal authority to administer this or that possession. He can never claim to be outside or beyond the range of this general will, for only through it can he be what he is.

Once again, then, we have renewed the supremacy of justice over all conditions under which private property is held. It is as a member of the Body that he has right of possession; and, therefore, all his right of possession is governed by the good of the Body, which is his own good. Any demands on his private

purse, which the general welfare renders expedient, are not invasions of his personal wealth, nor drafts upon his charity; they are the acts of that identical justice by which he is qualified to be an owner. His personality is not repressed or curtailed by being subject to those social demands; for the existence of those social demands is involved in his personality. It is not a conflict between his private interest and that of the State; for he is himself a citizen in the State, and its interests are his. If he disputes any demand made upon him, it will be on the ground that the interest of the State will be injured by its insistence. The State itself is interested for its own sake in seeing to it that his interests are not injured.

Nor is it only private property that is thus brought into ethical subordination to the needs of social justice, but also new possibilities of ownership are laid open through the recognition of the collective element in personality. For if personality be representative and collective, then it may find its field of exercise and realization through collective ownership. Men may win the moral qualities which the sense of property evokes, by owning things in common.

We have, indeed, seen this happen to the wage-earners by virtue of their Trade Unions. For while the wage system tends to reduce actual ownership to a minimum, and deprives the main mass of the industrial population of that sense of permanent private property which, economically, it rates so highly, nevertheless the workers have contrived, through massing their small subscriptions, to build up Unions with big funds in reserve; and, with the help of this accumulated support, they have recaptured much of the moral force which is embodied in ownership. They gain stability, for instance; they can look before and after.

They can secure some control over their own life-conditions. They can get their own will expressed and realized. They can exercise self-responsibility. They have reserves on which to draw; and are not at the mercy of temporary emergencies, or casual accidents. They can feel ground under them. They stand on their own feet. They are conscious of some independence. They have a recognized place in the world of affairs, and can make good their claims on existence. They are themselves established and rooted amidst the theory of things, through their corporate organization, and their certified holding. All this is the condition that we associate with the status of ownership; and every individual member of a strong Union thus acquires something of the worth and the dignity with which a man of property is endowed. Collectively, he has the moral stability of ownership; and if he has become aware of the true character of his personality, then he will gladly find for it its adequate expression by means of this collective ownership. He will not want his consciousness of property to be more definitely individualized. He will enjoy the sense of ownership as much in its public as in its private form. For his inner personal life is expressed as fully in the one as in the other. Thus the privilege of ownership may be expanded over all those workers who are organized into permanent and effective Trade Unions.

And the principle might be carried much further. Through all the volume of factory legislation the Nation is exerting her right of self-ownership. Through it she directs her own destiny; she brings herself into possession of her own affairs; she exercises her right of self-responsibility; she makes her will felt through material expression; she embodies in solid fact her sovereign self-control; for, as she thus governs her life

by intention, she makes this earth her own. The entire Body, then, collectively asserts its power of ownership through the Legislature. The moral stability and independence which property legitimately secures are constituted national possessions; while every individual citizen, who is conscious of what his citizenship means, gains, so far, the ethical value of a collective owner. He is moralized by such self-possession, mediated for him through his membership in the State.

It is beyond the purpose of this essay to discuss how far this collective ownership will carry us. It is enough to have shown that, in it, lies the most available correction of that ironical paradox by which an exaggerated notion of the absolute value of private property has led a Society based on individualism to confine the range of this value within a limited circle.

Obviously, if ownership has the virtues ascribed to it, then it ought to be extended to all. It ought to be included in the universal conditions of citizenship. This is only possible if collective ownership can come into play over and beyond the area which private ownership can cover, and so can spread out, for the many, the opportunity which our present system confines to the few. And this will depend on how far collective ownership can work upon the individual conscience and imagination with the same force as we now attribute to private proprietorship. The confidence with which we meet this last inquiry will depend entirely on our psychological estimate of personality. If anything of what we have said be true, then personality, which is inherently representative, will find its real and rich and effective realization under the terms of collective life. Collective ownership will be an adequate and joyful expression of its inner character and being. We shall be able to translate the old phrase,

which declared private property to be a trust for which we shall give account to God, in a new sense. We had haggled over the apparent individualism of such a conception. It omitted all reference to a community. It left the individual alone with God, to answer simply for himself. His fellows had no direct authority to review or decide what his exercise of his trust should be. But, now, we see that the trust that we speak of is a corporate trust. He holds it in and with his fellows. The personality which is answerable to God for its proper exercise of the trust, has its inherent existence in a fellowship, and, out of the fellowship, it has no authority to act. The trust is a common act. The fellowship is in trust for all that it holds; and the individual, only as organ and instrument of the fellowship. He can be called upon to fulfil the charges for which the community makes itself responsible in the discharge of its trust. It is not a secret affair between him and his God, how he administers his goods. The community can thus require of him whatever it needs in order to justify its own administration of its resources before the bar of God. His right of possession, his use of his own, are always relative to the larger trust within which he acts.

And, yet further, if he is to identify his personal claim with the claim of the fellowship he must have the assurance that the fellowship is not arbitrary or absolute in the demands that it makes upon him. And this assurance he can only have if the exercise of its ownership by the fellowship, within which his own right of ownership is exercised, be itself the expression of that absolute ownership which is the sole prerogative of the God Who made the earth and all that is in it. Back to God all rights run. Back in Him, the ultimate Creator, producing and sustaining and justi-

fying every capacity and energy that His will has set in action, all ownership stands. All claims are made by Him, through Him, to Him. His righteousness is the bond of all human fellowship. And this is so, just because property in outward goods is but the outcome of personality; and all human personality is the issue and image of the personality of God. In the Divine Fellowship in which God realizes Himself lies the source and justification of every fellowship into which man can enter. Man's authority to say of anything "That is mine" rests, finally, on his power to say "I am God's."

VIII

SOME ASPECTS OF THE LAW OF PROPERTY IN ENGLAND

BY

PROFESSOR W. M. GELDART

SUMMARY

THE place of the lawyer in this volume. Property is, on one side at least, a legal conception. Absence of any legal definition of property which will hold good for all purposes. The aim of this essay is description rather than definition. Law as an embodiment of ethics or public policy. The three aspects of our law of property which will be here considered.

I. Property and interference by the State. Blackstone and the law of nature: can an Act of Parliament be void? His theory of property as a natural right. His treatment of the question of expropriation.

Expropriation by Act of Parliament in England: delegation to administrative authorities in recent times: recent tendency to reduce the scale of compensation.

The power to expropriate is with us merely an instance of the sovereignty of Parliament: in America property is protected by the constitution, and interferences with it must be justified by specific powers: eminent domain, the taxing power, the police power. English freedom from any legal restrictions on these powers.

II. The content of the right of property, and its relation to other rights. "A man may do as he wills with his own": *sic utere tuo ut alienum non laedas.* Little assistance to be got from such maxims. The solidity or elasticity of the right of property in relation to other interests. Duties of the owner towards neighbours. The legal protection of the owner's rights by criminal and civil law. Limited duties of the owner towards the public. Limited character and protection of public rights such as rights of way. Improved security of the public enjoyment of common lands.

III. Property cannot be forced into the dichotomy, public or private. Influence of Roman Law traditions in presenting the problem as one of the Individual *v.* the State. Recognition in Roman Law of family claims. Freedom of disposition in English law set off by the facilities for settlement, which has made land in effect the property of family groups.

The English law of corporations: Corporations in the Church of England. Universities and Colleges. Corporations with government functions, corporations serving the purposes of private profit. The dedication of property to a purpose by means of a trust. Charitable trusts. The trust as a device which enables unincorporated associations to own property.

VIII

SOME ASPECTS OF THE LAW OF PROPERTY IN ENGLAND

English institutions are commonly supposed to be, or to have been till recently, peculiarly individualist in spirit, and this spirit is commonly supposed to be pre-eminently exhibited in English law. It may be said that if this is a fact, it is irrelevant to the subject with which under various aspects the present volume is concerned. "The thesis," it may be said, "is not one of law, but of social ethics; the rights of property which, it is contended, should give way to social well-being, are or claim to be moral rights, not legal rights. If law permits them to be sacrificed, this will not make it just to sacrifice them: if law invests them with inviolability, this will not avail for their defence before a higher than the legal tribunal."

It is just as well for a lawyer to bear in mind such considerations as these when he is invited to contribute to the present volume. *Ne sutor supra crepidam*; and he ought to be thankful for the Austinian drill which has taught him to distinguish the positive law with which jurisprudence is conversant from those other kinds of law, whether properly or improperly so called, which may be the subject-matter of philosophical or theological speculation. And yet it may be that

some words on certain aspects of modern English law will not be out of place among the historical, philosophical, and religious considerations which are the main theme of this collection. Whether property as an institution could be conceived as existing at all apart from law is a question hardly worth considering at a time when the legal aspect bulks so largely as it does in modern civilization. Whatever else property is, it is a legal conception, and, in its broad outlines, one of the elementary legal facts of which every one, without legal training, is aware from his experience of the society in which he lives, just as every one is aware of elementary facts of physics or physiology without having studied these sciences or even knowing their names.

It is not by way of abstract definition that the lawyer, at any rate the English lawyer, can hope to make the conception of property more serviceable for non-legal discussion. He would be hard put to it to find a definition which would hold water for all, even legal, purposes. At one time he will distinguish property and possession, at another he will speak of the possessor as having a "special property" in the thing of which another is the owner. He will deny that the subject can have a true property in English land, and the next moment he will find that a man's fee-simple or leasehold estate is described in a Statute imposing death duties as "property of which the deceased was competent to dispose." He will contrast the coins in my pocket, which are my property, with the £100 which my debtor owes me but which is not my property, and yet this debt, if I should become bankrupt, will figure among the property divisible among my creditors. Rarely if ever has the lawyer occasion to say anything of property which shall hold good of all property and

for all purposes. If ever he has, he might do a good deal worse than read what Professor Hobhouse has to say of the notion of property.

What I have to say is rather by way of description than of definition. Widely sundered as are law and ethics, law yet embodies much of the ethics or public policy of the time in which it has grown up. An account of some of the features of our law as it is to-day, or has been in the recent past, may be of some service if it calls attention to conceptions of public and private right which have been for the time being fixed in its structure, or which have been rejected or gradually eliminated, or which are in process of securing acceptance. I shall not attempt to answer the question suggested at the outset, whether the spirit of our law can be called mainly individualist or mainly collectivist. No society and no law can be wholly one or the other, nor have we any known standard of either by which the institutions of a country could be measured. But as I shall try to suggest in the last part of this paper, there are at any rate some features in our law which cannot well be classed under either head. The subjects with which I propose to deal are, first, expropriation and other direct interferences by the State with private property; secondly, the content of the right of property and its relation to other rights and interests; and thirdly, forms of property which are private in the sense of not being State property, and yet are not individual property.

I

If anywhere, we might expect to find in Blackstone a doctrine which would entrench the rights of property within the domain of natural law, safe from the encroachments of political power. "The law of nature,"

he says,[1] "being coeval with mankind and dictated by God himself, is of course superior in obligation to any other. It is binding over all the globe, in all countries, at all times; no human laws are of any validity if contrary to this; and such of these as are valid derive all their force and all their authority, mediately or immediately from this original." From this we might expect that he would tell us something in detail of the invalidity of human laws which are at variance with the law of nature, but we find nothing of the sort. With regard to Acts of Parliament he gives a number of rules for their construction, and among others a rule that "if there arise out of them collaterally any absurd consequence manifestly contrary to common reason, they are with regard to these collateral consequences, void," but he expressly denies that Acts of Parliament contrary to reason are void. "If the parliament will positively enact a thing to be done which is unreasonable, I know of no power in the ordinary forms of the constitution that is vested with authority to control it, and the examples usually alleged in support of this sense of the rule do none of them prove that where the main object of a statute is unreasonable, judges are at liberty to reject it; for that were to set the judicial power above that of the legislature, which would be subversive of all government."[2] It is not clear whether he would treat an Act which contradicted natural law as included in the case of an unreasonable Act, but it is at least noteworthy that he nowhere says that such an Act would be void; the truth seems to be that he refuses to face the possibility of such a conflict. As to the right of property he is equally unwilling to bring the question to a definite issue. He includes property among "absolute

[1] *Commentaries*, i. 41. [2] *Commentaries*, i. 91.

rights" of individuals, by which he means "those which are so in their primary and strictest sense; such as would belong to their persons merely in a state of nature, and which every man is entitled to enjoy whether out of society or in it,"[3] yet with no great assurance and with great limitations; "the original of private property is probably founded in nature, as will be more fully explained in the second book of the ensuing commentaries; but certainly the modifications of it under which we at present find it, the method of conserving it in the present owner, and of translating it from man to man, are entirely derived from society, and are some of those civil advantages in exchange for which every individual has resigned a part of his natural liberty."[4] From the later passage to which he refers it is clear that he regards the natural right of property as being merely the right of possession which "continued for the same time only that the act of possession lasted,"[5] whereas the permanent right of property, and with it the rights of inheritance and bequest, is "no *natural,* but merely a *civil* right."[6] Nevertheless the natural origin, such as it is, of property is sufficient to make the laws of England, "in point of honour and justice, extremely watchful in ascertaining and protecting this right."[7] After referring to Magna Charta and other statutes which protect the subject against arbitrary dispossession by the executive, he proceeds as follows:

> So great, moreover, is the regard of the law for private property, that it will not authorize the least violation of it; no, not even for the general good of the whole community. If a new road, for instance, were to be made through the grounds of a private person, it might perhaps be extremely beneficial to

[3] *Commentaries,* i. 123.
[4] *Commentaries,* i. 138.
[5] *Commentaries,* ii. 3.
[6] *Commentaries,* ii. 11.
[7] *Commentaries,* i. 138.

the public; but the law permits no man, or set of men, to do this without consent of the owner of the land. In vain it may be urged, that the good of the individual ought to yield to that of the community; for it would be dangerous to allow any private man, or even any public tribunal, to be the judge of this common good, and to decide whether it be expedient or no. Besides the public good is in nothing more essentially interested, than in the protection of every individual's private rights, as modelled by the municipal law. In this and similar cases, the legislature alone can, and indeed frequently does, interpose, and compel the individual to acquiesce. But how does it interpose and compel? Not by absolutely stripping the subject of his property in an arbitrary manner; but by giving him a full indemnification and equivalent for the injury thereby sustained. The public is now considered as an individual, treating with an individual for an exchange. All that the legislature does, is to oblige the owner to alienate his possessions for a reasonable price; and even this is an exertion of power which the legislature indulges with caution, and which nothing but the legislature can perform.[8]

I have set out at length this characteristic passage because it would be impossible to summarize it so as fairly to represent the adroit combination which it contains of different points of view. In spite of his sweeping assertion elsewhere of the supreme authority of the law of nature, he had no less doubt of the sovereignty of Parliament,[9] but he shrinks from bringing these two authorities into conflict. But reading between the lines one can feel sure that if the question had been forced on him, "Can the legislature take away the right of property, founded in the law of nature, as in some sense you say it is?" he would at any rate have admitted that there was no tribunal in the land

[8] *Commentaries*, i. 139.

[9] *Commentaries*, i. 186: "An Act of Parliament, thus made, is the exercise of the highest authority that this kingdom acknowledges upon earth. It hath power to bind every subject in the land, and the dominions thereunto belonging; nay, even the King himself, if particularly named therein."

which could call in question such an exercise of its power. He will not allow himself to use so crude a word as "expropriation," but when the legislature obliges the owner "to alienate his possessions for a reasonable price" this is nothing but expropriation with due compensation. It is a misrepresentation to speak in this connexion of the public "treating with an individual for an exchange."

The practice of expropriation by Act of Parliament where land was needed for the construction of works of public utility, such as roads and canals, was already well established in Blackstone's day, and received an enormous extension in the period of railway building. The process of private bill legislation gradually assumed a judicial character, intended to secure that compulsory powers should not be granted unnecessarily nor be more extensive than the needs of the case required. In course of time the clauses in private bills conferring and defining these powers and the procedure for determining the compensation, assumed a common form, which was ultimately stereotyped in the Lands Clauses Consolidation Act, 1845. This Act forms a code to be adopted wherever compulsory powers of taking land are sought, but it does not do away with the necessity of a special Act in order to confer these powers on the promoters of any undertaking, who are still called upon to prove to a Parliamentary committee the utility of the proposed undertaking and the necessity of taking particular lands for the purposes of it. The more modern method of proceeding by provisional order (an order made by the authority of some Government such as the Local Government Board or the Board of Trade) does not in general dispense with the need of Parliamentary sanction; for the provisional order is of no force until

confirmed by Act of Parliament.[10] It is a new departure that in more recent years the power of compulsory taking has been conferred by Statute without the necessity of Parliamentary sanction in each particular case. Thus under the Light Railways Act, 1896, s. 10, an order of the Light Railway Commissioners confirmed by the Board of Trade is to "have effect as if enacted by Parliament, and shall be conclusive evidence that all requirements of this Act in respect of proceedings required to be taken before the making of the Order have been complied with."[11]

The compensation allowed to the expropriated owner has been on no ungenerous scale. Not only is he allowed the fair market value of what is taken, but he receives a further allowance for the prejudice which may be caused by severance, and by the injurious effect which the working of the undertaking may have on the land which he retains. Against this, except in one or two cases, no set-off is to be made for the benefit which his remaining lands may get.[12] Under the Act of 1845 the owner can in most cases insist on having the amount determined by a jury, a tribunal not likely to put too low a value on proprietary rights, but in many instances this is excluded by more recent legislation. Under that Act too, though without any

[10] See, for instance, Public Health Act, 1875, ss. 176, 297.

[11] See also Local Government Act, 1894, s. 9; Small Holdings Act, 1908, s. 39; Housing and Town Planning Act, 1909, 1st Schedule, clause 2 (where statutory force is given to an order made by the local authority and confirmed by the Local Government Board, and it is provided that the confirmation by the Board shall be conclusive evidence that the order has been duly made and is within the powers of the Act).

[12] Light Railways Act, 1896, s. 13: "In determining the amount of compensation, the arbitrator shall have regard to the extent to which the remaining and contiguous lands and hereditaments belonging to the same proprietor may be benefited by the proposed railway." The Housing of the Working Classes Act, 1890, s. 38 (8) and the Housing and Town Planning Act, 1909, s. 58 (3) embody to some extent the "betterment" principle.

authority expressed in it, the practice grew up of allowing an addition of 10 per cent to the assessed value, as a solatium for the compulsory expropriation, but this addition has been excluded in a number of recent Acts.[13]

Bentham and Austin have banished natural rights from our text-books, and to an English lawyer at the present day the taking of private property for public purposes is not founded on any special right of the State, but is regarded as merely one consequence of the sovereignty of Parliament, nor is there any rule of law which binds Parliament to require compensation to be given. It is given because it is just and expedient that it should be given. If Parliament should pass an expropriating Act without providing for compensation, no English Court could call its validity in question.

Very different has been the case in the United States of America. Nowhere was Blackstone's work received with greater respect; and his doctrine of natural rights, which hovered on the borderland of law and ethics, was crystallized in the Federal Constitution, as well as in the Constitutions of most of the States, into a rule of law limiting the competence of the legislatures. Thus the fifth of the Amendments of the Federal Constitution adopted in 1791 (commonly called in America "the Bill of Rights") provided that "No person shall be . . . deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use without just compensation."[14] The result is that in the United States ex-

[13] Local Government Act, 1894, s. 9; Small Holdings Act, 1908, s. 39; Housing and Town Planning Act, 1909, 1st Schedule, clause 3.

[14] Cf. Ely, *Property and Contract* (Macmillan, 1914). Personal security, personal liberty, and the right of private property are the three "absolute rights" of individuals enumerated by Blackstone (*Commentaries*, I. 123-140).

propriation for public purposes is regarded as made under a specific power of the Union or the State, the right of "eminent domain," and the conditions under which this power can be exercised have formed the subject of judicial decision in the Federal and State Courts. An Act of the Legislature depriving a citizen of his property which failed to comply with these conditions would be held void unless it fell within some other recognized power such as the taxing power or the "police power." The existence of these powers necessarily prevents the constitutional guarantees given to private property from being construed literally: no State could exist without a power to take part of the property of individuals by way of taxation for public purposes, or without a power of regulating to some extent the use of private property in the public interest, although such regulation must inevitably interfere with the liberty of private use, and thus diminish the profits of private enjoyment. But where, as in the United States, the Legislature is confined to acting within the scope of specific powers, the Courts are called upon to define and limit that scope in such a way as not to render nugatory the safeguard which the Constitution affords to private property. The American law reports are full of decisions (not always easy to reconcile) on the constitutionality of all manner of legislation on such subjects as the regulation of buildings, the prohibition of truck, hours of labour in factories, and workmen's compensation. A Federal income tax has been made possible only by an amendment of the Federal Constitution, and an amendment of the Constitution of the State of New York was necessary in order to make valid a law compelling employers to insure their workmen.

With us the power of Parliament to tax has, it is

true, been to some extent differentiated from its general legislative power by the constitutional convention which subordinated the powers of the House of Lords to those of the House of Commons in the matter of money bills. The Parliament Act, 1911, has made the House of Commons the sole authority in this respect, has made its authority a part of the law of the Constitution, and has attempted to give a legal definition of a money bill, which is probably narrower than the conception which governed the constitutional convention. But the decision whether a Bill passed by the Commons is a money bill within the meaning of the Act is left not to the Law Courts but to the Speaker; and no tests have been imposed similar to that of equality of burden, in virtue of which some American Courts have held invalid an Act imposing death duties only on estates above a certain amount. The steep graduations of death duties and income tax which we have seen in recent years are hampered by no constitutional convention or rule of law.

The "police power" as a separate department of legislation is even more unfamiliar to us than that of "eminent domain." Yet legislation of this type is familiar and increasing. The whole of our factory legislation, for instance, is an interference (mainly with freedom of contract and partly with property) which under a Constitution which guarantees the inviolability of property and contract, would need justification, if it could be justified at all, as an exercise of the "police power" in the interests of public welfare. Obvious instances of interference with purely proprietary rights are the provisions of the Public Health Acts, which require persons building on their own land to submit plans for approval to a local authority, and to conform to regulations intended to

secure sanitary conditions. The Housing and Town Planning Act, 1909, gives drastic powers to the local authority to close and demolish dwellings dangerous to health, subject to an appeal to the Local Government Board, but without allowing the owner recourse to the Law Courts. As against the tendency of this and much other similar legislation, we may note the provisions of the Licensing Act, 1904,[15] which give a right of compensation to the owner of licensed premises who is refused a renewal. In this case, if we used the American classification, we might say that the right of eminent domain has been substituted for the police power.

II

If we ask what is included in the rights of property, we shall get little guidance from general maxims, whether of a merely popular kind, such as "A man may do as he wills with his own," or of a more legal stamp, like the Roman law tag, *sic utere tuo ut alienum non laedas*. For it is not in truth the material object which is a man's own, but the rights which the law gives him in respect of it; nor is it every damage to the interests of another which the law forbids, but only the violation of another's legal rights. To say that he may do as he wills with his own is therefore no more than to say that he may do what the law permits; and to say that he must not harm that which is another's, is merely to say that he must not infringe the legally protected interests of another.

Some legal wrongs are so well defined that it would not occur to any one to excuse them by a plea of the

[15] Now embodied in the Licensing (Consolidation) Act, 1910, ss. 20, 21. The compensation is provided by a charge levied on licensed premises in the area.

exercise of the rights of property: it would be childish to argue that a murder was more excusable when committed with the murderer's own pistol than with a stolen one. On the other hand, where it is clear that no legal wrong is done, it is superfluous to rely on proprietary right as a defence. Our law, in the absence of special circumstances, imposes no duty of active assistance, however great the harm which will come to another from its refusal. It is no crime to leave a man to drown, where one is in no way responsible for the danger in which he is placed. But if in such circumstances it was sought to make a man liable for his neglect, it would be unnecessary for him to defend himself on the ground that he was concerned to protect his clothes from injury, or that he was entitled to retain exclusive possession of the rope which he had at hand.

Yet the English maxim has a certain significance, inasmuch as in the clash of interests, the rights of property have a certain solidity, or even elasticity, which will enable them to carry the day against claims less well defined. While the law holds some acts clearly wrongful, others clearly innocent, it seems to recognize an intermediate class of conduct, which will involve liability in the absence of a just cause or excuse, and some judges have gone so far as to lay it down that all conduct by which harm is intentionally caused to another, though it falls within none of the stereotyped categories of wrongdoing, will *prima facie* involve such liability. It is not material to consider here how far this doctrine is sufficiently founded on precedent, or whether it is likely to be finally accepted. But it is worth noting that the exercise of proprietary rights seems to be one case of the just cause or excuse, which will avail against such a *prima facie* liability,

and thus forms a limit in one direction to the extension of the doctrine. Neighbouring owners, by the mere fact of their ownership, have certain limited rights and duties towards each other. Thus, while my neighbour is entitled to such support from my soil as is necessary to keep his land in its natural state from subsidence,[16] he is not entitled (in the absence of grant or prescription) to such further support as may be necessary to the safety of any buildings which he may choose to erect. If, then, I excavate on my own ground, with the result (and even, it would seem, with the object) of causing his buildings to collapse, I have done nothing to interfere with any defined right of his, and if he should seek to hold me liable for wilfully or negligently causing him damage, it is a complete answer that I was merely exercising my own proprietary rights. Similarly, since English law recognizes no such right (apart from contract) as that of mere amenity, I may intercept my neighbour's view by erecting a hideous building. Unless he has acquired (by grant or by lapse of time) a right to the light necessary for comfort or convenience of his dwelling-house or business premises, I may even cut off his light. The right of owners to the flow of a natural stream in a defined channel is well recognized, but there is no corresponding right to receive water percolating beneath the surface, so that an owner was held free from liability who made borings on his land with the result of interfering with the water-supply of a large city, and the allegation that his conduct was

[16] This is an instance of what is technically known to English lawyers as a natural right, in the sense of a right which attaches to property under normal conditions, as opposed to a right such as an easement which can be acquired only by grant or prescription. This has of course nothing to do with the "natural rights" of legal-philosophical speculation.

intended to compel the local authority to purchase his property was held to be irrelevant.

Interference with the rights of the owner, apart from the punishment for misappropriation (still disproportionately severe in comparison with the penalties for all except the most serious offences against the person), and for wilful and substantial damage, is not a criminal offence, and it is not creditable to the landowners of this country that they should still seek to intimidate the public by what Professor Maitland well called the "wooden falsehood," "Trespassers will be prosecuted." On the other hand, our civil law of trespass is singularly sweeping in its recognition of the owner's right to exclude. Every entry on land without authority is a trespass, for which the Courts will give at any rate the remedy of nominal damages, and which the owner and his servants may resist or put an end to by the forcible removal of the trespasser. In point of fact the acquiescence or good feeling of owners of uncultivated land, except where the claims of sport have been treated as paramount, have prevented the existence of these legal rights from being altogether intolerable. It is significant that in recent years the Courts have refused, in more than one case, to give to the owner the discretionary remedy of an injunction to restrain innocent trespass.

Towards the public at large the owner of land and buildings owes at common law the duty of seeing that they do not become a source of danger to persons lawfully passing on the highway by reason of want of repair, obstruction, unfenced excavations, or the like. He must avoid pollution of the air or running water. But apart from restrictions such as these, he is under no general duty to the public, which has no right to have the countryside preserved free from disfigure-

ment, if we except the recent legislation which has conferred on local bodies the power to restrain the exhibition of disfiguring advertisements.[17] Even on public ways the rights of the public are very limited. In general the soil of the highway remains the property of the adjacent owner, though in urban districts it has been vested in the local authority by Statute, to such limited extent as is necessary in order to enable it to perform its duties of repair, sewering, and the like. The public right is a right of passage only, and a person may be a trespasser on the highway if he uses it for some other purpose, such as watching the operations of the adjacent owner or his servants upon his land. In this respect the rights of the public stand on a lower level than those of an owner, for there is no "right of privacy" which entitles one owner to complain of being overlooked by his neighbour. In point of security the rights of the public to footpaths leave much to be desired. It is true that they are not liable to be extinguished by non-user for any length of time. But the evidence of their existence depends in most cases on the fact of user, so that disuse for any considerable time may make the proof of their existence difficult or impossible. The posting of threatening notices by an influential owner, interference by his keepers, and actual blocking up may interrupt the public enjoyment so long, that when at last some individual undertakes the assertion of the public right, the evidence of it may be too doubtful to support his case. It is only in quite recent times that local authorities have been entrusted with the duty of upholding public rights of way. Further, while the mere enjoyment of a private "easement" of way for

[17] Advertisements Regulation Act, 1907; Ancient Monuments Act, 1913, s. 18.

a certain time, and under certain conditions, renders the right indefeasible, the enjoyment by the public for any length of time in itself gives no right, but merely affords a presumption that the owner has "dedicated" the way to the public, a presumption which may be rebutted by showing that the land was so settled as to be in the hands of a limited owner who had no power to make the dedication.[18] Lastly, it may be noticed that a public way may be closed by an order of the competent authority, not only in consideration of a substituted way, but even on the mere ground that it is unnecessary, and that in such a case no compensation is paid by the private owner, who obtains a valuable accession to his property. In this respect the public right is less favourably regarded than the right of the expropriated owner in case of compulsory purchase.

The lands known as "Commons" are called so not because they are in law common to the public, or even to the members of any community, but because a number of persons enjoy in common certain rights, usually rights of pasture, over them. Whether or not there ever was in England such a thing as a village community, it is at any rate certain that since English law took definite shape, rights of common have been not communal rights but groups of individual rights. The land itself was in most cases regarded as belonging to one person, the lord of the manor, while the tenants of the manor, or some class of tenants, shared with him certain rights over the land. In other cases the land was owned and cultivated in severalty by numerous owners, sometimes with periodical re-allot-

[18] A Bill intended to put public rights of way in respect of their creation by long enjoyment on a footing similar to that of private rights of way, has been introduced in Parliament more than once in the last few years, but has not so far found its way to the Statute Book.

ment, and all enjoyed rights of pasture over so much of the land as in accordance with the agriculture system of the time was lying fallow. The enclosure of the waste land of a manor, on condition that enough was left for the exercise of the common rights, had been allowed by the Statute of Merton, 1235,[19] but this condition became more and more difficult to fulfil, and in the eighteenth century the policy of enclosure by Act of Parliament converted a large proportion of the common lands of the country into land held in severalty. In the course of the nineteenth century it came to be seen that, though the rights of the owners of the soil and of the commoners were the only rights known to the law, yet the public living in the neighbourhood were, in fact, largely interested in the maintenance of the unenclosed commons. Some recognition of this principle is already to be found in the Enclosure Act, 1845, but it received full effect only in the Commons Act, 1876, which recited that "it is expedient that enclosure in severalty, as opposed to regulation of Commons, should not hereafter be made, unless it can be proved to the satisfaction of the said Enclosure Commissioners and of Parliament that such inclosure will be of benefit to the neighbourhood, as well as to private interests and to those who are legally interested in any such Commons." The effect of this and succeeding enactments has been practically to stop the policy of enclosure, and to substitute that of regulation, which, while respecting existing private rights, has preserved and improved the public enjoyment.[20]

[19] The provision was practically repealed by the Commons Act, 1893, which forbids enclosure under the Statute of Merton except with the consent of the Board of Agriculture, and makes it subject to the same conditions under which enclosure under the Enclosure Acts can take place.

[20] Commons within the Metropolitan Police Area had already been exempted from the ordinary Enclosure Acts, by the Metropolitan Commons Act, 1866, and their regulation and preservation is provided for by the Metropolitan Commons Act, 1866 to 1898.

III

In most discussions of the rights of property an assumption is commonly made that the only parties to the contest are the State (sometimes called Society) and the individual, who are supposed to stand facing one another with nothing between. It is assumed too that private property means individual property, and that such cases as we may find of property vested in or held for the benefit of groups, or appropriated to purposes rather than destined for the use of individuals, may be disregarded as exceptional, or may be brought into line as being in ultimate analysis mere instances either of individual or of State property. Yet the truth seems to be that at no time has this clear dichotomy been possible; and though in most modern countries there have been strong tendencies towards the individualisation of private property, at the same time and especially in the most recent times in England, there have been countercurrents no less strong.

That the dilemma, State or individual? should have been so prominent is due above all to two causes. In the first place, it afforded what seemed strong ground to either side in the controversy. The individualist could oppose the natural rights of the individual to the conventional and artificial character of the State: the upholder of State rights could point to the insignificance of merely individual interests as against the claims of "Society," while the claims of all smaller societies were ignored. In the second place, our political thinking has proceeded too much in terms taken from the City State, in which societies between the State and the individual were suppressed or ignored,

and from Roman law, itself a product of the City State, with its clear-cut divisions between *jus publicum* and *jus privatum,* and its sharply outlined theory of property.

Yet even Roman law retained or developed rules which prevented property from being regarded as a merely individual right. True, the shadowy rights of the *gentiles* had disappeared by the classical period: the *agnati* might be excluded by will, and even sons and daughters might be disinherited, if the appropriate formulae were employed. But by the fiction, which the tribunals were successfully invited to adopt, that a testator who had entirely excluded his nearest relations from all share in his property had shown himself to be insane by making so undutiful a will, their right to at least a share—*legitima pars*—of the succession was re-established. The newer form of marriage which became normal by the end of the Republic deprived the husband of the control over the wife's property which he had at an earlier period, and excluded her from succession to his estate among the *sui heredes*; but the institution of the *dos* gave the husband an interest in, and power of administering, property coming from her or her family, while safeguarding it against his dispositions and the claims of his creditors; and the *donatio propter nuptias* made it possible to subject property of the husband to a similar régime. Lastly, a man's relatives were able by the appointment of a *curator* to prevent the dissipation of his property, not only in case of his insanity but also if he became a spendthrift.

In countries not subject to the English common law, the family character of property has been emphasised by institutions similar to these, whether based on the

traditions of Roman, or derived from native law.[21] In England, the whole course of development has, at least on the surface, been in the direction of freeing the individual in dealing with his property from all family claims. We have never adopted the institution of the spendthrift's curator, and the right of wife and children to a "reasonable part" of the goods of the deceased, which was probably once universal but had come to be regarded as a custom of particular localities, was entirely abolished before the end of the first quarter of the eighteenth century. The power of making a will was extended to owners of land, partially in the sixteenth, and completely in the seventeenth century. But marriage had important effects on proprietary rights, which survived till a much later date. On the one hand, the wife became entitled on the husband's death to one-third of his freehold land, and this right of dower could not be defeated by him without her consent, not even by his selling the land. On the other hand, the husband became absolute owner of her personal property; he became entitled to her real estate during the marriage, and to a further right during his life, if issue was born; and the wife was deprived of all power of disposition except with his consent as long as the marriage lasted. These rules of the matrimonial régime were attributed to the "unity of person" of husband and wife. They have been in substance swept away by the reforms of the nineteenth century; by the Dower Act, 1833, the husband was enabled to destroy the wife's right of dower by any disposition in his lifetime, or by his will; half a century later, by the Married Women's Property Act, 1882, the whole of a married

[21] Scotland still recognises the indefeasible rights of widow and children (*jus relictae* and *legitim*), as well as the *cura prodigi*, and some provisions of the same kind have been introduced in some of the United States.

woman's property was made her "separate estate," with full power of disposition *inter vivos* or by will.

Thus we seem to have arrived at an extremely individualistic form of private property, recognising no claims of the family except in the rules of intestate succession, which can always be overridden by the owner's dispositions. This is, however, only to look at one side of the matter. It assumes that the individual is what is called an absolute owner, including under that term the tenant of land in fee-simple. As a matter of fact English law has always been extraordinarily favourable to the recognition of limited ownership or limited interests in property, real or personal. It is true that the attempt of the legislature made by the Statute *de Donis* in 1285 to protect estates tail, *i.e.* freehold estates given so as to pass in a strict line of descent, was defeated by legal fictions before the end of the Middle Ages, but the ingenuity of conveyancers gave renewed effect to the wishes of the land-owning class by the device of the "strict settlement," under which, so far as possible, the actual possession and enjoyment of land was given to persons who had no more than a life tenancy, while the power of disposing of the inheritance depended on the concurrence of the life-tenant and the tenant in tail in remainder (usually his eldest son), when the latter reached the age of twenty-one. In practice this power has usually been exercised not for the purpose of freeing the land from the fetters of the settlement, but in order to tie it up by a fresh settlement for another generation. Thus the land of the country has been for the most part converted into a number of family domains, each under the government of a limited monarchy, and serving social and political no less than economic purposes. "Property for power" was strengthened by a system which protected

the domain from the folly or improvidence of its temporary holder, and which excluded younger children from succession to anything more than a sum of money charged on the property.

The system was left untouched by the legislation which followed the Reform Act of 1832, and indeed was if anything facilitated by reforms of procedure in that period. Only a partial satisfaction of the individualist demand for "free land" was given by the Settled Land Acts, 1882-1890, which permitted the sale of settled land upon condition that the purchase money was brought into settlement, and it needed the stimulus of heavy death duties (first made approximately equal in 1894 for land and personal property) and of the special land taxation of 1909-1910 to induce any considerable break-up of estates. Whether in the future the system of family estates can still be made to serve purposes of sufficient public advantage to secure its survival for an indefinite time, in view of its obvious evils, is a question beyond the scope of this essay; it is at any rate noteworthy that the collectivist tendencies of recent times have taken away the strength of merely individualist attacks on the law of primogeniture and the custom of settlement, and have aimed rather at securing rights other than ownership to occupiers and would-be occupiers of land; as, for instance, by the Agricultural Holdings Acts and Small Holdings Acts.

Settlements of money and property other than land, effected by a different legal mechanism, have served a similar purpose in protecting the family against the individual, but except so far as they have been ancillary to land settlements are of less importance in the structure of society as a whole. Yet such a settlement, when it comprises a great business, and especially with the assistance of the institution of the "private company,"

may be of considerable importance in securing the continuity and permanence of commercial and industrial power.

Turning aside from these cases of property which belong rather to kinship groups than to individuals, we may take note of the extent to which property under devices ancient or modern has been and is being permanently assigned to public ends without being State property. Our common law of corporations took shape in times no longer modern, and enabled groups of men, and those who from time to time should succeed them, or the series of successive holders of an office, to be regarded as immortal persons capable of owning property. The Church of England is not such a corporation, but within it are numerous corporations (either "aggregate" such as a Dean and Chapter, or "sole" such as a Bishop or incumbent) who are the holders of the property commonly called Church property. Our ancient Universities and the Colleges within them are equally the holders of property which is not the property of the individuals who compose those bodies. Yet none of this is State property, however much modern legislation may have imposed regulations and restrictions in order to safeguard it from mismanagement or diversion. These may be regarded as the purest types of property-holding bodies whose functions are public in the sense that they do not exist for purposes of private gain, and who nevertheless can in no sense be treated as mere delegates or agents of the State authority. It is beside the mark to say they furnish the livelihood of their members, or some of them, for the State too provides the salaries of the Chancellor of the Exchequer and of the village postman; or that the State has power by legislation to control or take away their property, for it can do as

much for the most private property of any individual.

No doubt a Corporation may be nothing more than a cog-wheel in the Government machinery, like the Commissioners of Woods and Forests or the Postmaster-General, or it may be a mere device for the furtherance of individual profit, like the majority of the modern Companies incorporated with limited liability. Yet we must guard on the one hand against thinking that Government functions necessarily mean State functions, or if we insist on identifying Government and State, we must be prepared to see the State taking many bodily forms which seem to have an independent existence. We may see a municipal Corporation at law with the Crown as to the extent of its powers, or opposing a Bill promoted by a neighbouring Corporation; or a "State" litigating a boundary dispute with another "State" in the same Dominion, or the Trustees of the British Museum disputing with the Crown the title to a prehistoric hoard. On the other hand, bodies which pay, or hope to pay, dividends to their shareholders may exist for the furtherance of public purposes, like Railway Companies or the Water Board, and be subject to regulations intended to secure their adequate subservience to the public interest. The Bank of England, by virtue alike of the privileges conferred and the restrictions imposed by Statute, fills a unique place in the national economy; the Chartered Company of British South Africa governs a territory far larger than the British Islands; yet each is a Company of stock- or shareholders.

Not only may the mechanism devised in the first instance for purposes of private gain be employed for the incorporation of societies whose property and activities are directed to public objects, as when a body for the furtherance of education is incorporated under

the Companies Act, 1908, or the Industrial and Provident Societies Act, 1893; but without incorporation, our law of trusts allows property to be placed by gift or bequest in the hands of trustees for the promotion of all manner of purposes. A charitable trust is sometimes called by lawyers a public trust, as opposed to the "private" trust, which is one for the benefit of individuals; yet no co-operation of any organ of the State is necessary for its creation, though when once created it will as a rule come under the supervision and control of the Charity Commissioners, or in the case of an educational charity, of the Board of Education. A charitable purpose in the legal sense includes not only the relief of poverty, but religious and education purposes, and such other purposes beneficial to the public as are sufficiently analogous to these.[22] Such trusts are treated with special favour by the law; their creation is exempted from the rule against perpetuities which forbids the tying up of property for an indefinite period, and their income is not subject to the payment of income-tax. On the other hand, the conveyance of land for charitable purposes is subject to somewhat troublesome formalities under special legislation dating from the early eighteenth century;[23] but the prohibition against gifts by will for the like purposes has in recent times been converted into a requirement that land so left shall be sold unless it is required for actual occupation.

Hardly separable from the dedication of property to a purpose by means of a trust is the part which the law

[22] A gift by will to the Society for the Abolition of Vivisection has been held to be charitable.

[23] This restriction on conveyances for charitable purposes is at the present day of much greater importance in practice than the old law of mortmain properly so called, which dates from the thirteenth century and forbids conveyance of land to a corporation, but from which there are numerous exemptions by Act of Parliament or licence from the Crown.

of trusts plays in enabling societies which are unincorporated to hold property. For the carrying out of its objects a society can hardly exist without some property, be it only the periodical contributions of its members. If the society is debarred from incorporation by law (as is the case with Trade Unions), or does not think it worth while to undergo the expense and formalities of incorporation, it is not a body which can directly hold property. Whatever is its property (in the popular sense of the word) must then be held by one or more individuals who, whether called so or not, will in fact be its trustees. They will hold the property upon trust—not simply for the members as individuals, for in that case each member could insist on a division—but upon trust for the members as members of the society, to be used and applied for its objects and in accordance with its rules. In practice the result of this arrangement hardly differs from the holding of property by a corporate body; for the society's property in the hands of its trustees will be liable on principle to the debts and obligations incurred on behalf of the society by its officers, and will be subject to such control by the society or its governing body as the society's rules may provide. We have here a "purpose-trust" and something more. A Nonconformist place of worship, and the endowments devoted to its maintenance and the ministrations in it, from one point of view are simply property bound by a trust for a religious purpose; but from another they form the property of a religious society. In this, as in many other instances, the purpose for which the society exists is one which falls under the legal category of charity. But there is nothing to prevent a society formed for any lawful purpose, though not charitable, from holding property in the same way, so long as it is not a case of a gift or

bequest in terms which are intended to create a permanent endowment and so offend against the rule against perpetuities. Trade Unions, for instance, are not charities, but have enjoyed and extensively exercised the power to hold property through the medium of trustees ever since their purposes were freed from illegality in 1871.

It may be worth while to attempt to state briefly the results of a somewhat discursive survey of a considerable mass of detail. In the first place our constitutional law has made no attempt to place rights of property in an exceptional position, as against the sovereignty of Parliament; to that sovereignty they, like all other legal rights, must give way; and the power to expropriate, to tax, and to regulate are merely manifestations of it, not defined and limited powers which the legislature exceeds at its peril. The extent and manner of their exercise has varied from time to time, in accordance with changing views of policy: even the power of expropriation has in recent years been delegated to subordinate authorities, and the liberality with which compensation was formerly given has in some cases been restricted.

Turning to the consideration of the content of the right of property and its relation to the interests of others, we saw that while little guidance can be obtained from general maxims, yet in some ways the right of property occupies a privileged position. Its exercise may serve as a just cause or excuse for conduct prejudicial to the interests of others. The owner's absolute power of exclusion is tempered only by the owner's good feeling, and to some extent by judicial discretion. The duties of the owner towards neighbours and the public are of a narrowly limited kind, even if we take into account modern powers of regula-

tion. The legal protection, even of recognised public rights, is comparatively weak. Yet in the case of commons, legislation since the middle of the nineteenth century has given the protection of the law to public enjoyment, which had previously no legal basis at all.

Lastly, we saw that private property is not merely a matter of the rights of individuals, and that our law offers remarkable facilities for making it subserve other than individual interests. No other modern system has gone so far as ours in permitting ownership to be so broken up into limited estates or interests as to make property, for a large part of the owning and especially the land-owning classes, a family rather than an individual possession. The ease with which corporate character can be obtained under our modern law, the flexibility of the law of trusts, the freedom of association, have made possible the dedication of property to purposes which outlive the individual, and may in a broad sense be called "public," and its vesting in or on behalf of groups bound together for their furtherance. Such property and such groups may stand in special relations to the State, and may form the subject of special legislation and regulation; but we must guard ourselves against thinking that the property is State property, or that the groups who control it are mere departments of the State.

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